

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
SUPPLEMENTAL
APPENDIX**

ORIGINAL

77-2006

**United States Court of Appeals
For the Second Circuit**

THOMAS LIPUMA,
Petitioner-Appellee,

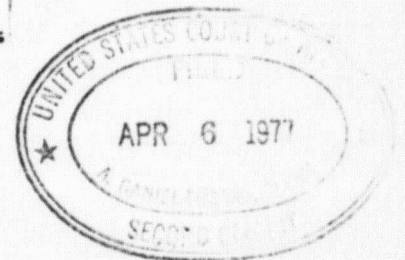
-against-

COMMISSIONER OF CORRECTIONS,
et al.,
Respondents-Appellants.

APPELLEE'S SUPPLEMENTAL APPENDIX

NANCY ROSNER
Attorney for Petitioner-Appellee
401 Broadway
New York, N.Y. 10013
(212) 925-8844

• Dick Bailey Printers, 290 Richmond Ave., Staten Island, N.Y. 10302
Tel.: (212) 447-5358



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

INDICTMENT.....	A-1
MRS GEIBEL'S TESTIMONY - EXCERPTS FROM TRANSCRIPT OF THE MOTION TO SUPPRESS IDENTIFICATION EVIDENCE.....	A-5
EXCERPTS FROM THE TRANSCRIPT OF THE TRIAL IN NEW YORK COUNTY SUPREME COURT.....	A-13
EXCERPTS FROM THE TRANSCRIPT OF THE MOTIONS TO SET ASIDE THE VERDICT ON THE DAY OF SENTENCE.....	A-154

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK
 JAMES

THE PEOPLE OF THE STATE OF NEW YORK,

— against —

JAMES DOYLE

PETER RAIMONDO

AND

THOMAS LIPUMA

Defendant S

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendant S of the crime of BURGLARY IN THE SECOND DEGREE, committed as follows:

The defendant S, in the County of New York, on or about January 10, 1972 knowingly entered and remained unlawfully in the dwelling of Helen Geibel and Berknott Inc, at night, with intent to commit the crime of larceny therein.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant S of the crime of ~~XXXXX~~ PETIT ~~XXXXX~~ LARCENY IN THE ~~XXXXX~~ DEGREE, committed as follows:

The defendant S, in the County of New York, on or about January 10, 1972 ~~XXXXX~~ certain property from Helen Geibel having an aggregate value of ~~nottin~~ \$25.00, to wit, U.S. Currency and personal property

~~XXXXXXXXXXXX~~
 FRANK S. HOGAN,

~~XXXXXXXXXXXX~~
 District Attorney

A 002

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendants, of the crime of CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE, committed as follows:

The defendants, in the County of New York, on or about January 10, 1977, with intent to benefit themselves and a person other than an owner thereof and to impede the recovery by an owner thereof, knowingly possessed certain stolen property owned by Helen Geibel having an aggregate value not in excess of \$250.00.

FOURTH COUNT

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of BURGLARY IN THE SECOND DEGREE, committed as follows:

The defendants in the County of New York, on or about January 10, 1972 knowingly entered and remained unlawfully in the dwelling of William Robinson and Berknot Inc, at night, with intent to commit the crime of larceny therein,

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said defendants of the crime of GRAND LARCENY IN THE SECOND DEGREE, committed as follows: .

The defendants in the County of New York, on or about January 10, 1972 stole certain property from William Robinson having an aggregate value in excess of \$1,500.00 to wit, personal property.

A 004

SIXTH COUNT

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendants of the crime of CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE, committed as follows:

The defendants, in the County of New York on or about January 10, 1972 with intent to benefit themselves and a person other than an owner thereof and to impede the recovery by the owner thereof, knowingly possessed certain stolen property owned by William Robinson having an aggregate value in excess of 1,500.00, to wit: personal property

FRANK S. HOGAN

District Attorney

A4

ads

2A 095

2/8

Geibel-People-Direct

THE WITNESS: Blue.

MR. KREIDMAN: Indicating the defendant.

I have no further questions.

Thank you, Mrs. Geibel.

MR. COIRO: May I, Your Honor?

THE COURT: Yes, Mr. Coiro.

CROSS EXAMINATION

BY MR. COIRO:

Q Mrs. Geibel, you said you returned to your room at approximately what time that evening?

A Well, I imagine it was around 8E30.

Q And you stated that there was a man seated at the desk?

A Right.

Q Is that correct?

A Right.

Q Now, how long did you say you observed that man seated at the desk?

A Three or four minutes.

Q Were you able to describe the other men that were in the apartment?

A No.

Q You were not?

A They were not in the room with him.

A5

ads

22 A 006

2/9

Geibel-People-Cross

Q They were not in the room with him?

A We had a bedroom as well as the living room.

THE COURT: You've got to keep your voice up please, Mrs. Geibel.

A We had a bedroom as well as a living room and that's where they were, at least one of them I saw and that's where we converged into a hallway.

Q Now, Mrs. Geibel, did you describe to the police the physical characteristics of the man who was seated at the desk?

A No, I did not. I just recognized his face.

Q Well, when the police questioned you that evening....

THE COURT: There is no indication that the police did question her, Mr. Coiro.

MR. COIRO: I'll withdraw the question, Your Honor.

Q Did there come a time that you were questioned by the police that evening, Mrs. Geibel?

A No, I was asked to identify, that's all.

Q Nobody spoke to you at all before you went to the station house?

A What do you mean? No. I was taken there to see if I could identify the men in the room.

A6

2/11 Geibel-People-Cross

the corner at you, is that correct?

A Right.

Q And the shorter man was at the desk, is that correct?

A There was also a short man in the bedroom.

Q And also a short man in the bedroom?

A Yes, right.

Q Now...

A I recognized his features, that's how I recognized him, not by height, color or anything else.

Q Mrs. Geibel, did you ever tell anybody that you were positive the short man was the one at the desk, that you were positive of him?

A I never said anything about a short man at the desk, no.

Q You never said that to anybody?

A No. I wasn't describing him as a short man.

THE COURT: Mr. Kreidman, have you furnished Rosario material to Mr. Coiro in connection with this witnesses?

MR. KREIDMAN: Grand jury minutes, if Your Honor wishes.

THE COURT: Whatever Rosario material there is, Mr. Kreidman.

aml 3-1 Gelbel - people cross

THE COURT: What did you say when you saw that--

THE WITNESS: I said that's the man although he's changed his clothes. That's exactly what I said.

BY MR. CORIO:

Q You said that he had changed his clothes?

A Right. He was not wearing what he was wearing in the room.

Q What was he wearing when you saw him in the room?

A I don't remember, but I know it wasn't what he was wearing in the line-up.

Q Do you know-- Do you remember what the man in the line-up was wearing?

A No.

Q Mrs. Gelbel, when you ~~tax~~ looked at these two or three line-ups, different line-ups--

MR. KREIDMAN: Objection. She said three, not two or three.

Q Three. When you looked at the three line-ups, can you tell me if the same man was in each of the three line-ups?

A I didn't see him.

Q You didn't see him?

A You mean the same man in each of the line-ups?

aml 3-2 Geibel - people - cross

Q Right.

A There were different men.

THE COURT: You mean the man she picked out?

MR. CORIO: Yes.

THE COURT: Was he in any of the other line-ups?

THE WITNESS: I didn't see him.

BY MR. COIRO:

Q In other words, the man you picked out you only saw ~~it~~ in one line-up?

A Right. I only recognized in one line-up. I only saw him.

Q Right. The possibility is that he could have been in the other line-ups, right?

MR. KREIDMAN: Objection. Possibilities, conjectures.

THE COURT: Sustained.

BY MR. COIRO:

Q Can you tell me for a fact that the man was not in the other two line-ups?

A No.

THE COURT: Her testimony is she didn't see him.

Q And you can't recall, Mrs. Geibel, how this man that was seated at the desk was dressed?

aml 3-3 Geibel - people - cross

A No, he was in a business suit, if you mean that.

Q He was in a business suit?

A Right.

Q How was he dressed in the line-up?

A He had a business suit on, I think. I don't remember it was a different color. That's all I know. And I don't recall that. That's a long time to remember what people wear. That wasn't important. Except that I know at the time that it was different than when I saw him in the room.

Q I see. Now, Mrs. Geibel--

MR. COIRO: May I have the pictures, please.

MR. KREIDMAN: Sure.

THE COURT: Do you ~~mx~~ have the photograph of the other line-up, Mr. Kreidman, of all the line-ups?

MR. KREIDMAN: Yes.

THE COURT: Have you turned them over to defense counsel?

MR. KREIDMAN: No.

THE COURT: Will you do that, please.

There are two or three line-ups?

MR. KREIDMAN: Three line-ups.

THE COURT: You turned over the other photographs

MR. KREIDMAN: I already have.

A10

aml 3-9 Geibel - people - cross
- redirect

A Yes.

MR. KREIDMAN: May I interject?

MR. COIRO: Yes.

MR. KREIDMAN: May I interject of this woman?

MR. COIRO: Yes.

MR. KREIDMAN: May I interject in the cross examination?

THE COURT: You have a question? Yes, you may, if it relates to the testimony of this witness.

REDIRECT EXAMINATION

BY MR. KREIDMAN:

Q Mrs. Geibel, do you remember I visited you in your hotel last night?

A Yes.

Q And do you remember my showing you any photograph?

A You showed me photographs.

Q I showed you photographs or--

A A photograph, yes.

Q A photograph. Do you remember which photograph I showed you?

A I don't remember, no. You just said that these were photographs, that's all.

Q All right. Did I show you-- How many did I

All

aml 3-10 Geibel - people - redirect

show you?

A Three.

Q Did I show you all three or did I show you one?

A I don't remember.

Q Okay. I don't remember either. I show you this photograph, People's Exhibit A. Can you recall whether or not you saw this before? *(emphasis added)*

A I don't know. I don't remember it because I--

Q Go ahead, am'am.

A I just looked at the photographs.

Q And did you say that one of these individuals in the photograph looked like the man who was seated at your desk when I showed it to you?

A Yes.

Q All right. And who was it that you said last night looked like one of the individuals that was seated at your desk, the individual that was seated at your desk?

A Well, it was probably the same one.

Q Right. And did I in any way suggest to you which of these people in this line-up was the person seated at your desk?

A No.

Q Okay.

Geibell-People-~~E~~ Gross

THE COURT: Mrs. Geibell, when you viewed these lineups with Inspector Flood, was your husband with you?

THE WITNESS: No.

THE COURT: Where was he?

THE WITNESS: He was in the anteroom. He also viewed them.

THE COURT: But he didn't do it with you?

THE WITNESS: No.

THE COURT: He did it separately?

THE WITNESS: Right.

THE COURT: All right.

THE WITNESS: We had no communication.

BY MR. COIRO:

Q Now, Mrs. Geibell, aside from looking at a photograph or photographs last night from January 10, 1972, were you shown any other photographs?

A No.

Q By any--

A We haven't had any connection with the case.

Q You were shown no photographs at all?

A No; the answer is no.

Q Mrs. Geibell, you were asked by Mr. Kreidman to look around the courtroom and see if you saw the man

A13

ads

72

17

Flood-Defendant-Direct

whether or not all three defendants were in the same lineup?

A My recollection is that we did it one at a time.

Q In other words, each defendant in a separate line-up?

A Right.

Q Now, you saw Thomas LiPuma when he was taken out of the Berkshire Hotel, is that correct?

A Yes.

Q And then you saw him ~~at~~ subsequently at the station house?

A Yes.

Q At any time from the time he left the Berkshire Hotel or stood in that line-up did he ever change his clothes?

A I don't recall. I don't recall.

Q Mr. Flood, were you one of the officers that was in the apartment on the sixth floor that Mr. LiPuma was taken out of?

A I was -- Yes, I was in the apartment. Yes.

(Continued on following page.)

A14

Flood - deft. - direct

BY MR. COIRO:

Q Did you know if they were white, Negro?

A Oh, of course. Of course they told us, right, sure.

Q Well, that's what I'm saying.

A Yes, they told us it was three white men in there. Of course they did.

Q Right.

Did they say one was tall, two were short?

A Oh, I don't remember. I wasn't interested in that. I figured they were still in the building, and we could come up with them, and that was it, and we did, with five or ten minutes.

Q By the way, was there any photographs taken of the room in which these defendants --

A I don't recall. I don't know.

Q Is it possible that any photographs were taken of the defendants in that room at that time, sir?

A I doubt that very much.

Q Thank you very much.

A You're very welcome.

THE COURT: Thank you.

THE WITNESS: Thank you.

W. Robinson- People - Direct

Q And you say there were two furs missing.

What was the other fur missing?

A The other coat?

Q Yes.

A The other coat was a mink jacket.

Q And what did you pay for that, sir?

A Twenty-five hundred dollars in the same place at, I think, a year before that, as I remember it. I have it--

Q Excuse me, sir?

A I have the records from Saks Fifth Avenue, but I ~~MMME~~ don't have them with me.

Q Are they back on the Island?

A Yes.

Q And what else did you note that was missing, sir?

A Some jewelry.

Q Now, ~~MMI~~ could you tell the members of the jury what jewelry you noted was missing?

A There was an antique gold chain and a solitaire diamond ring and a pair of my cuff links, which is about all that really amounted to anything.

Q Was there anything else missing, sir, besides that?

W. Robinson - People - Direct

A A little tiny pin, I think that was all.

Q Now, what did you pay for the antique gold chain, sir?

A As I recall, I paid about five hundred dollars for it.

Q And the solitaire diamond ring, sir?

A That was --

MR. COIRO: Your Honor please, could we fix the time of this purchase?

THE COURT: With respect to each of these, Mr. Kreidman, will you ascertain the time and place of purchase?

THE WITNESS: The gold chain was purchased in 1970.

Q And --

A The solitaire diamond ring was a family heirloom, and I don't know when it was purchased, some time in 1890, I think, something like that.

Q Now, the cuff links, how much did you pay for that, sir?

A A hundred dollars.

Q And when did you buy them and where did you up them?

A I bought them at Dunhill Taylors on 57th Street,

5

Robinson-People-direct

precinct house, and the precinct house gave me the⁴²
coats.

Q Now, the property you picked up from the
police, is the same property that was missing, is
that correct?

A Yes, it is.

Q Now, was anything kept for evidence, sir?

A I beg your pardon?

Q Any of your property kept for evidence?

A Kept by the court for evidence you mean?

Q By the police or the district attorney.

A The cuff links and the pin.

Q Cuff links and pin. Did you get back the
diamond and the necklace?

A I never saw them again.

MR. KRIEDMAN: I have no further questions.

THE COURT: Any Rosario material in connec-
tion with this witness, Mr. Kriedman?

MR. KRIEDMAN: Yes, sir.

MR. COIRO: Judge, did he say a necklace?

THE COURT: Well, I assume he means the antique
gold chain. There was no necklace, it was a chain.

THE WITNESS: The chain was a necklace, your
Honor.

THE COURT: I see.

DeBona - People - Direct

A I returned to the lobby.

Q And who went to the lobby, sir? Who was in the lobby?

A Several police officers and civilians.

THE COURT: Keep your voice up, please, Patrolman DeBona.

THE WITNESS: Yes.

Q Did you see any of the complainants in the lobby at the time?

A I saw Mr. Robinson in the lobby. And I don't recall if Mr. and Mrs. Geibel were in the lobby or not.

Q And when you got to the lobby, did you check something out, sir?

A Yes.

MR. COIRO: Objection. I'm going to object to leading. I've been reluctant to do so, but --

THE COURT: Objection is overruled.

Q When you got to the lobby, sir, did you check something out?

A Yes, we did.

Q What did you do?

A New registrations for that day.

Q And was anybody sent to check out a new arrival?

A Yes.

A19

DeBona - People - Direct

Q Who left to check out new arrival?

A Patrolman Donnelly and Patrolman Green and Patrolman Powers.

Q Did there come a time when you responded to Room 613?

A Yes, I did.

Q And what did you see in Room 613 when you got there?

THE COURT: Mr. Kreidman, I think it would be helpful if we can have some idea of the time sequence that all of this occurred in.

Q What time did you respond to Room 613?

THE COURT: Can we ascertain when he got back down to the lobby, first of all?

Q Officer, could you go into a time sequence, if you can, from the time that you first spoke to the Geibels, to the time that you met the other police officers, to the time that you went to the roof and went down to the tenth floor, to the time that you got down to the 10th, to the lobby, and checked out to see new arrivals, until the time that you got to Room 613?

A After we had arrived on the 17th floor, other police officers arrived two or three minutes later. It took approximately fifteen or twenty minutes to search the

A20

DeBona - People - Cross

stated this?

A No.

Q Well, did you ask them to describe the three men?

A Yes.

Q And what description did they give you?

A Three male whites, approximately my height.

Q How tall are you, Officer?

A At Five eleven.

Q And all three were the same height?

A Approximately the same height.

Q Go on.

A They then said -- I believe it was Mr. Geibel said that one of them had flashed a police type of badge as he passed him.

The three men then went to the elevator. Mr. Geibel followed them. He thought it was suspicious, and he called the desk clerk about it.

Q And that's the only description you received, three male whites, about five foot eleven?

A At that point, yes.

Q And you conducted a search of the entire hotel looking for three male whites, five eleven?

A Yes.

Newham-People-Direct

A Yes .

Q Did you see anything happen at this point?

A One man was walking towards the wall.

Q And was he placed up against the wall?

A Yes.

THE COURT: Please, Mr. Kreidman, allow the witness to testify if you would. You're an experienced trial lawyer, you know what leading questions are. Allow the witness to give his testimony.

MR. KREIDMAN: I didn't figure it was that relevant.

THE COURT: Then you shouldn't have asked the question in that case.

MR. KREIDMAN: Okay.

BY MR . KREIDMAN:

Q What happened to this third man?

A He was placed against the wall and handcuffed.

Q Now, did you see anything in the room at this time when you got there?

A There was a suitcase on the bed.

Q And did you see anything in the suitcase?

A The suitcase was partially open and there were what appeared to be two fur coats.

Q MR. COIRO: Objection to what appeared to be, if

Newham-People-Direct

your Honor please.

THE COURT: Overruled.

BY MR. KREIDMAN:

Q What did you see?

A I saw two furs sticking out of the suitcase.

Q And would you describe what the furs looked like?

A One was a leopard skin and one was a brown fur.

Q By the way, the three men, how were they dressed, as best as you can remember, sir?

A One man was in boxer trunks and a tee shirt; the other two men had pants and shirts on.

Q Okay. Did you notice any clothing in the room, sir?

A There was clothing in the closet.

Q Did you see any of those three men in this room now?

A Yes.

Q Point them out to the members of the jury.

A The gentleman -- the gentleman standing at the table.
(Indicating.)

THE COURT: The record will reflect the witness has pointed to the defendant.

BY MR. KREDIMAN:

A23

ads

90 - ****

M 001

2/2

Colloquy

THE COURT: Ysu may step down, officer.

Thank you.

Call your next witness, please.

MR. KREIDMAN: Helen Geibel.

Your Honor, she's not here. She should be
in the witness room.

THE COURT: Do you have another witness, Mr.
Kreidman?

MR. KREIDMAN: No. She's beingbrought up
from my office. I don't know why she's not here.

May I have just a few moments?

THE COURT: We'll just wait until she gets
here, Mr. Kreidman.

MR. KREIDMAN: Thank you. She's on her way
here, Your Honor.

H E L E N G E I B E L, residing in Sun City, Arizona,
called as a witness on behalf of the People, having
beenduly sworn, testified as follows:

THE COURT: You may proceed, Mr. Kreidman.

MR. KREIDMAN: Yes, sir.

DIRECT EXAMINATION

BY MR. KREIDMAN:

Q Mrs. Geibel, what is your occupation, ma'am?

A I'm retired. I'm a housewife.

A24

2/3

Geibel-People-Direct

Q Excuse me, ma'am?

A I'm a housewife.

Q And you're retired from what occupation, ma'am?

A I worked with George B. Buck, actuary.

Q And how long did you work for them, ma'am?

A Oh, over 25 years.

Q Have you ever been arrested or convicted of a crime, ma'am?

A I have not.

Q Now, on January 10th, 1972 where were you living?

A In the Berkshire Hotel.

Q And where is that located?

A 52nd and Madison.

Q And what suite number was that?

A 1710.

MR. KREIDMAN: I have a photograph I'd like to have deemed marked.

THE COURT: It will be marked. No need to have exhibits deemed marked on trial, Mr. Kreidman.

MR. KREIDMAN: I'm sorry.

THE COURT: Marked People's exhibit 4, for identification.

ads

92

2/4

Geibel-People-Direct

(Received and marked People's exhibit 4,
for identification.)

Q I show you People's 4, for identification.
(Exhibit handed to the witness.)

Q Is that a fair and accurate representation
of how the sitting room area and hall area of your suite
looked on January 10th, 1972?

A It is.

MR. KREIDMAN: I now offer it as People's 4,
in evidence.

(Exhibit handed to defense counsel.)

MR. COIRO: No objection, judge.

THE COURT: Received.

(Received and marked People's exhibit 4, in
evidence.)

Q At about 8:30 p.m. on January 10th, 1973 did
you return to your suite?

A I did.

Q Where were you coming from?

A From a walk.

THE COURT: I'm sorry. You have to keep your
voice up, Mrs. Geibel, so everybody can hear you.

A From a walk. We were walking as we did every night.

Q Who is we?

A26

2/5

Geibel-People-Direct

A Who was with me?

Q Yes.

A My husband.

Q By the way, when you left your suite did you leave the lights on or did you turn them off?

A They were on.

Q And when you got back to your suite would you tell the members of the jury what you saw?

A Well, I unlocked the door and I opened it and went in and there was a man sitting at the desk and I said what are you doing in my room.

Q Did you look at him?

A I looked at him, yes.

Q What was he doing at the desk?

A He was going through the desk.

Q And you said, what are you doing at the desk?

A Right.

Q What did he say?

A He said there had been a robbery in the hotel and they were security officers and they were investigating.

Q And do you see that man here in court?

A I do.

Q Would you point him out to the members of the jury?

A27

2/6

Geibel-People-Direct

A He's that man over there. (Indicating.)

THE COURT: Would you indicate who you're referring to, madam?

THE WITNESS: The man who has just risen.

THE COURT: The record will reflect the witness has pointed to the defendant.

BY MR. KREIDMAN:

Q Was he seated at the desk?

A He was.

Q And then what happened, Mrs. Geibel?

A Well, my husband came in then and he took over the conversation and he asked for his credentials.

MR. COIRO: That's objected to, if Your Honor please.

THE COURT: Objection is overruled, Mr. Coiro.

BY MR. KREIDMAN:

Q Go ahead.

A My husband asked for his credentials and he put his hand in his pocket and he didn't have any credentials. He said he'd get them, he'd be right back with them.

Q Then what happened?

A Then two other men came from the bedroom and everybody converged in the hall.

THE COURT: Which hall?

2/7

Geibel-People-Direct

THE WITNESS: The hall of the apartment.

BY MR. KREIDMAN:

Q Which was the first one to appear out of the bedroom?

A I don't know. I did look there and there was someone peeking behind the -- there was a little projection in the room and they were looking behind that. That's the first I knew there was more than one man.

Q At this point what did all three do?

A They converged in the hall and sort of made their way to the exit, you know, out of the apartment.

Q What did your husband do?

A He followed asking for credentials. He ~~asked them~~ followed them to the elevator and they said they would come back with their credentials.

Q Did you get a good look at any of the three men in that room?

A Only the man at the desk.

Q And that was the man seated at the desk?

A Right.

Q Did your husband come back -- by the way, what was your husband's condition at this time?

A Well, he just had undergone a brain operation.

Q Undergone a brain operation. And how many

2/8

Geibel-People-Direct

brain operations had he undergone?

MR. COIRO: Objection, if Your Honor please.

A This was the third...

THE COURT: Please, Mrs. Geibel. When there is an objection please don't answer the question until I rule on the objection, please.

THE WITNESS: I didn't hear it.

THE COURT: Objection is sustained.

BY MR. KREIDMAN:

Q What did your husband do when he got back to he suite?

A He said there's something wrong, something is going on here and he called the operator and told her that the men had been there and said they were security officers.

Q Did the police later respond?

A Yes, they did.

Q Were you later thatnight brought to a precinct?

A I have.

Q And where was that?

A 17th Precinct.

Q Now, from the time the defendant left your apartment until -- your suite, until you were brought to the 17th Precinct had you seen him again?

A No.

A30

2/9

Geibel-People-Direct

Q And did there then come a time when you viewed certain line-ups?

A Yes.

Q How many line-ups were there?

A Well, I recall three.

Q Were the same men in the line-up or different men?

A Different men.

Q Did you make any identifications at that time?

A I did.

MR. COIRO: I'm going to object to this, if Your Honor please, at this point.

THE COURT: What ground, Mr. Coiro?

MR. COIRO: Number one, judge, I think this witness has already pointed this defendant out in this courtroom. What the District Attorney is now doing is trying to bolster that identification by showing that she had made a prior identification.

MR. KREIDMAN: I cite to The Court Section 60.35 of the Criminal Procedure Law and in turn 60.30.

THE COURT: The objection is overruled.

BY MR. KREIDMAN:

2/10

Geibel-People-Direct

Q You made one identification, is that correct, ma'am?

A That's right.

Q And who did you identify?

A I identified the defendant.

Q And how soon after you saw him in your apartment, your suite while he was at the desk did you identify him in a line-up at the precinct, the police precinct?

A Well, I would say about an hour after; approximately an hour, maybe a little more.

Q And did you see him at any time between the time you saw — I'll withdraw the question.

Did you see him at any time between the time you identified him in the line-up and the time you saw him in your room?

A No.

(Continued on following page.)

J.k.

H. Geibel - People - Direct

BY MR. KREIDMAN:

Q Did anybody in any way whatsoever suggest to you who to point out in the lineup?

A No.

Q Now, after LiPuma and the other two men left your suite, what was the condition of your suite?

A Well, the desk had been ransacked and suitcases and things were on the bed, on the floor.

Q Was anything missing?

A Yes, a pill box.

MR. KREIDMAN: May I have this marked People's 5 for identification, your Honor.

[THEREUPON, PILL BOX WAS MARKED PEOPLE'S EXHIBIT NUMBER 5 FOR IDENTIFICATION.]

BY MR. KREIDMAN:

Q I show you People's 5 for identification.

[Handing to the witness.]

Q Is this the pill box that was in your suite that was missing after the defendant and the two others left your suite?

A It is.

Q Now, where in your --

MR. KREIDMAN: I now offer it in evidence, your Honor, subject to connection.

H. Geibel - People - Direct

MR. COIRO: Judge--

[Handing to defense counsel.]

MR. COIRO: -- I am going to object to it at this point, if your Honor pleases.

THE COURT: On what ground, Mr. Coiro?

MR. COIRO: Judge, we have a motion that is pending before the Court.

THE COURT: The same grounds as your objections to the items that were introduced yesterday?

MR. COIRO: That's correct, your Honor.

THE COURT: Objection overruled.

Received subject to connection.

[THEREUPON, PILL BOX PREVIOUSLY MARKED PEOPLE'S EXHIBIT NUMBER 5 FOR IDENTIFICATION, WAS RECEIVED AND MARKED PEOPLE'S EXHIBIT NUMBER 5 IN EVIDENCE.]

BY MR. KREIDMAN:

Q Now, where was that pill box before you found it missing?

A On a dressing table in the bedroom.

Q Is that the area where the two other men came from?

A It is.

Q And was there any -- anything else now of

H. Geibel - People - Direct

value missing from your apartemnt?

A No. Just some change out of a pocketbook.

Q Well, that's of value.

Some change missing from the pocketbook?

A Yes.

Q Where was that pocketbook?

A Well, it was in the bedroom in the closet.

Q And did you have cash in that pocketbook?

A I did.

Q And where was that cash?

A In the pocketbook?

Q Was there any particular place in the pocket-book?

A Yes, it was sort of a compartment that wasn't easilh viewed. I mean, it was sort of a secret place.

Q And that was still there?

A That was still there.

Q And it was the change that was missing?

A Right.

Q And whose pill box is that?

A It was--my husband was using it for his medicine.

Q Using it?

A Yes.

Q And --

H. Geibel - People - Direct

THE COURT: The question is whose pill box was it, Mrs. Geibel?

THE WITNESS: Well, I guess it was mine. He gave it to me. He didn't give it to me. It was a gift to him.

THE COURT: Whose was it? Where did it come from?

THE WITNESS: Well, I am trying to find out where it came from. It came probably from a showing, maybe DuPont or one of those people had a luncheon where they gave these out.

THE COURT: Who was it given to?

THE WITNESS: My MUMMMMMM husband.

BY MR. KREIDMAN:

Q What is the value of that, if you know?

A I don't think very much. Maybe five dollars.

MR. KREIDMAN: Thank you.

I have no further questions.

THE COURT: Cross-examination.

MR. COIRO: Yes, your Honor.

May I have the grand jury minutes?

MR. KREIDMAN: Oh, I am sorry.

May the record reflect, your Honor. I am giving over to defense counsel Mrs. Geibel's tes-

A35.1

H. Geibel - People - Direct

timony in the grand jury of the County of New York consisting of four pages.

[Handing to defense counsel.]

MR. KREIDMAN: I turn over police form, your Honor, UP-61.

[Handing to defense counsel.]

MR. COIRO: With your Honor's permission, may we approach the bench?

THE COURT: Yes.

[Thereupon, Mr. Coiro and Mr. Kreidman approach the bench for a discussion held off the record and out of the hearing of the jurors and the alternate jurors, after which the following proceedings resume on the record, in open court:]

MR. COIRO: Judge, may I have a few moments to look at this material?

THE COURT: Yes.

MR. KREIDMAN: With your Honor's permission, may I ask the witness one further question?

THE COURT: Yes.

BY MR. KREIDMAN:

Q Mrs. Geibel, approximately how many men were in each of the line-ups that you viewed?

A Maybe eight or ten, I don't know.

H. Geibel - People - Direct

Q And in each of those -- and you made one identification, is that correct, of all those men?

A One.

Q And there were different men in each line-up; is that correct?

A Yes.

MR. KREIDMAN: I have no further questions.

By the way, your Honor, in the interim, may we have that photograph passed among the jury?

THE COURT: Yes.

MR. KREIDMAN: Thank you, your Honor.

[Thereupon, People's Exhibit Number 4 was passed amongst the jurors and the alternate jurors.]

THE COURT: Are you ready, Mr. Coiro?

MR. COIRO: Yes, Judge.

THE COURT: Proceed, please.

MR. COIRO: Thank you, your Honor.

CROSS EXAMINATION

BY MR. COIRO:

Q Mrs. Geibel, you stated that you unlocked the door to your apartment?

A I did.

Q And that you saw--the first thing you saw was

H. Geibel - People - Direct

a man seated at the desk; is that correct?

A That's correct.

Q Now, would you be good enough to describe to me what that man was wearing?

A He was wearing a jacket ~~and~~ and pants. I'm not sure whether it was a suit or a combination, but he was wearing a jacket and pants.

Q And was he wearing a tie, a neck tie?

A I would assume so, yes. ~~MMMM~~ They were dressed like residents of our -- ~~MMMM~~ people in the hotel. They were dressed --

Q Would you say whether the jacket and pants matched but with a tie and a shirt?

A Yes.

Q NOW, you stated that this man came towards you; is that correct?

A No, I didn't state that.

Q Tell me what happened when you opened the door.

A I went in the room, and I said, "What are you doing at my desk?"

And he said, "The hotel, there has been a robbery, you have been robbed. We are security officers investigating."

H. Geibel - People - Direct

Q What happened next, Mrs. Geibel?

A Then my husband took over.

Q Before your husband took over, did the man get up from the desk?

A I wasn't -- at that point, I went into the hotel-- into the hall ~~MMY~~ and I saw someone from around the corner looking out. The next thing I knew they were all converging.

Q Mrs. Geibel, did there come a time when that that man/was seated at the desk rose from that seat and walked towards you?

A Walked towards the door with my husband. Not towards me. The hall is only about four foot wide -- three foot wide -- four foot wide, I would say.

Q Fine, Mrs. Geibel. Did he stand up and walk?

A He must have, but I wasn't paying any attention to him then at that point.

Q You weren't paying any attention to him at all?

A I was ~~REVERA~~ concerned about my husband at that point.

Q Right, naturally. You were nervous, you were upset?

A Right.

H. Geibel - People - Direct

Q You were even frightened?

A Well, I was not as frightened then as I was later.

Q Fine.

A Because we believed them then.

Q Right, Mrs. Geibel. Now, how long would you say from the time you opened up the door and you saw this man seated at the desk and he walked towards this foyer with the other two men. How much time elapsed?

A Three or four minutes.

Q Now, you stated that you weren't looking at the man that was at the desk, you were looking at somebody else; is that correct?

A I was in the hall just standing there.

Q Right.

A The bedroom was to the left. The living room was more open to the right.

Q Right.

A And I saw this man. This is when I really became disturbed.

Q Right.

A Because I didn't know there was more than one person in the room.

THE COURT: Excuse me. Which man are you referring to now?

Pylo

H. Geibel - People - Direct

THE WITNESS: The man that was in the bedroom.

THE COURT: You saw a man in the bedroom?

THE WITNESS: Right.

THE COURT: I see.

BY MR. COIRO:

Q So that at that point you were not watching the man that was at the desk?

A No, I was not.

Q Right?

A Yes.

Q Now, you say all three converged in this little hallway; is that correct?

A Right.

Q Taking -- you said it lasted about four minutes, right?

A Approximately, I would guess.

Q Then you were watching the men in the bedroom, right?

A I wasn't watching them. They just converged. I wasn't watching anybody. I was watching the whole scene, I guess.

Q And MMM when they walked or converged into this little foyer, the men were not facing you, their

H. Geibel - People - ~~HEMM~~ Cross

back was to you, is that correct, or their profile?

A Their back wasn't to me at any time. They came towards me.

Q Right. Came towards you?

A Right.

Q Then they went out in the hallway with your husband and they walked down to the elevator; is that correct?

A Right. My husband was with them.

Q Fine. Now, the man that was seated at the desk, how tall was he when he stood up?

A I wasn't looking at his height. I saw his face, that's all.

Q Mrs. Geibel, did there come a time later that evening that you were interviewed by two uniformed or four uniformed police officers?

A Yes.

Q In fact, it was a Patrolman Newhan and a Patrolman DeVona that first came to your suite?

A I didn't remember their names.

Q But you remember the two patrolmen?

A I do.

Q You remember having a conversation with them?

H. Geibel - People - Cross

A I don't remember the conversation, no.

Q Did you tell those two -- did you describe to those two patrolmen & the three men that you saw in your apartment?

A Perhaps I did. I don't know.

Q Did you tell Patrolman DeVona and the other patrolman that the three -- that the men were about five foot eleven?

MR. KREIDMAN: Objection to the question, your Honor.

THE COURT: Overruled.

A I don't remember saying anything ~~MEM~~ about their heights, no. I know that the man that came from the bedroom, ~~MAN~~ one was tall and one was short, tall and short. I don't know their heights. I don't know ~~MEM~~ whether it was five foot eight, nine. They were not six feet, in my remembrance.

Q A tall man ~~MM~~ and a short man came from the bedroom, you said?

A Right.

Q Now, could you tell me how those men were dressed?

A Everyone had jackets on, as guests in a hotel.

Q Did you tell the two patrolmen or one of the

H. Geibel - People - Cross

two patrolmen that interviewed you that two of these men were of Latin type?

A Yes, I did. I thought.

Q You thought two of them were of Latin type?

A Yes.

Q Did you tell him which two you thought were of Latin type?

A No, I did not.

Q You did not?

A No.

Q Now, you testified that you saw this defendant in the station house later that evening; is that correct?

A That's correct.

Q And that you viewed some line-ups?

A That's correct.

Q And that you picked him out?

A I did.

Q Is that correct?

A Yes.

Q And when you picked him out of a theline-up at the station house, how was he dressed?

A He had changed his clothes.

Q He had changed his clothes?

H. Geibel - People - Cross

A Right.

Q What was he wearing when you saw him in the police line-up?

A Well, he was wearing a jacket or a different -- of a different color. I don't know what else he was wearing.

Q Did they do anything to his hair?

A I don't think so. I don't know anything about his hair. I remember the features, that's all.

Q But he was wearing different clothing, that you are sure of?

A I am sure of that.

Q You are positive of that?

A Different color, yes. I'm positive.

Q And when you saw him in the station house, on did he have/a shirt and tie?

A Yes.

[Continued on the next page.]

A45

1gl H. Geibel-People-Cross

CROSS EXAMINATION

BY MR. COIRO:

Q You testified that there was some change missing from your purse?

A Right.

Q How much change was missing ?

A Oh, I don't know. I haven't any idea.

Q Well, before you went out, had you counted the coins that were in your purse?

A No. There were no coins in there when I went out. I know I ~~was~~ always had them. I guess I had to use the phone when I was out walking sometimes.

Q I ~~may~~ beg your pardon?

A There was change in my purse, that's all I know, but how much, I don't know.

Q But you can't tell me then exactly whether it was a nickel, a dime, a penny?

A No, it was more than that. It was change.

Q Forty cents, fifty cents?

A A dollar, two ~~dollars~~ dollars. I don't know.

Q Three dollars?

A Yes.

Q And if the bills were still there and the change was missing?

H. Geib el-People-Cross

A Right, but that was after.

Q But he did ~~identify~~ identify himself?

A After we asked him to.

Q Right. Did you ever tell Mr. McNally that the individual at the desk was -- had foreign characteristics?

A I said I thought he might have been foreign-- parents.

Q THE COURT: What did you say?

THE WITNESS: Might have been foreign born.

BY MR. COIRO:

Q The man at the desk foreign born?

A Well, foreign descent.

Q Did you also tell Mr. McNally that the man at the desk was the short man?

A I did not.

Q You're positive of that?

A I'm positive.

Q Absolutely sure?

A I have no recollection of his height. I saw his face, that was it.

Q Well, what did you tell the police officers who first came on the scene to look for--

A What do you mean, "What did I tell them?"

Q They were trying to apprehend the perpetrators, weren't they?

1g4

116

H. Geibel-People-Cross

A Yes.

Q Well, they had to know who to look for?

A Well, ~~xxx~~ three men.

Q And that's it? Is that it?

A I said they were latin, didn't I?

Q They were latin?

A I thought.

Q You thought?

A Two of them, I said.

Q Two of them were latin?

A (Nodded affirmatively.)

Q All the same height, short, fat?

A No, one ~~was~~ was taller, one was shorter. I don't know about the other.

Q Moustache?

A I don't remember any moustaches.

Q Beards?

A No, I don't recall that.

Q Now -- By the way, your husband -- These men, these three men that were in the room, nobody hurt you, did they?

A They certainly did not. They were gentlemen.

Q As a matter of fact, would you be good enough to describe the man's voice to me who spoke to you, the

A47.1

H. Geibel-People-Cross

man that was seated at the desk?

A No, I can't describe that.

Q Did you ever tell anybody that they were well spoken?

A I think my husband said they were gentlemen.

Q Well mannered?

A Yes, he did.

Q Now, do you recall telling Mr. McNally that you could not identify the tall men?

A No, I don't.

Q Did you have a conversation with Mr. McNally in reference to tall and short men?

A There might have been. There might have been a reference to a tall and a short man. I know that, that was clear in my mind.

Q And did you also tell Mr. McNally it was the short man you were positive of?

A Oh, no, I didn't. There was no -- no statement made like that at all.

Q No statement like that made at all?

A Not as I recollect it. I remember a face and only a face.

Q And, by the way, from the time you -- When did you ~~leave~~ leave to return to Arizona?

H. Geibel-People-Cross

A Around maybe the 21st, 22nd of January.

Q And then you have never laid eyes on that defendant again ~~until~~ until you came back to New York; is that correct?

A That's right.

Q And, as a matter of fact, before you came into this courtroom, I believe it was on Wednesday, you ~~was~~ were shown a photograph of that defendant by Mr. Kreidman?

MR. KREIDMAN: Objection.

A Oh, no, I was not. I was shown a lineup.

THE COURT: Objection overruled.

BY MR. COIRO:

Q A picture of a lineup?

A Right.

Q That that defendant was in?

A Nobody was pointed out to me.

Q I didn't say anybody pointed anybody out to you.

A Then what are you getting at? I don't understand. I was shown a lineup.

Q Right.

A Right.

Q And you picked this defendan t?

A I did.

Q And then the ver y next ~~th~~ day you came into

A49

H. GE1b el-People-Cross

court and you pointed a finger at him, didn't you?

A Yes, I did.

Q Did you ever tell John McNally when ~~ix~~ he interviewed you at your home that you couldn't even remember the men?

A I don't know as I told him that. I might have said I don't know whether I could identify him, but as soon as I saw him I could identify him. I never would forget that face.

Q You'll never forget that face?

A No, sir, that was pretty tough for me.

Q And yet you couldn't describe that face to the police?

A No, I couldn't. He has a distinctive face.

Q He's got a very distinctive face?

A Yes, that's why I remember.

Q And when you were ~~xxxx~~ interviewed in a matter of minutes after you called the police, you couldn't even describe his features to the police officer.

MR. KREIDMAN: Objection.

THE COURT: Objection is overruled.

THE WITNESS: What do you mean describe his features? I ~~wasn't~~ wasn't looking at features. I was looking at the whole face.

H. Geib el-People-Cross

BY MR. COIRO:

Q But Mrs. Geibel, didn't you want the police to apprehend these men?

A Of course I did.

Q Well, if he was so distinctive, why didn't you give them a description?

A I don't know what you're driving at. I remember his ~~re~~ face.

Q Mrs. Geibel, there is no question I could ask you that would make you change your mind on that score?

A No, there isn't. I can ~~reme~~ remember that face.

Q And you couldn't describe him?

A No, I couldn't, except that he had -- might have been of foreign parents or foreign born or latin.

Q That he was foreign born?

A Or of foreign descent.

Q By the way, how did you get from the hotel to the 17th Precinct that evening?

A Well, I was taken in a police car or detective's car. I don't remember which.

Q As a matter of fact, wasn't it a Inspector Flood who took you?

A Perhaps. I think it was.

Q Did you have a conversation in the car with

H. Geibel-People- Gross

Inspector Flood

A No, except generalities.

Q Didn't Inspector Flood tell you that they had taken three men out of the Berkshire Hotel and they had them in the stationhouse and that's who he ~~wanted~~ wanted you to look at?

A Well, he told us that they had people for a lineup and he wanted us to go and -- What do they call it? -- interview--

Q View?

A --View a lineup. That's what they were supposed to do. So that's what I thought ~~there~~ there would be.

Q He didn't say the three men had come from the hotel?

A He could have; he could have. I don't know. All I know we were going to view a lineup.

Q As a matter of fact, you received a letter of commendation from Inspector Flood, didn't you?

A Yes -- What ~~w~~ do you mean?

Q Didn't Inspector Flood write you a letter?

A No. He gave my husband a letter introducing him to a friend in Scotsdale, just to go see him and say hellow. A very nice man. That's all the letter was.

Q And didn't he say that he thanked you and your

A52

H. Geibel-People-Cross

husband for everything you had done?

A Oh, no, no, no; not that I know of.

Q Did you show that letter to Mr. McNally?

A I don't know. I don't think so.

Q Didn't your husband say to Mr. McNally, "I got the letter from Inspector Flood in my desk drawer at your home in Arizona?"

A He might have.

Q And didn't you then go and get that letter?

A I don't remember that. There was nothing in that letter though thanking us that I recall, and I haven't seen that letter since he gave it to us and we've never used it. We have no reason to.

Q Mrs. Geibel, you were interviewed by Mr. McNally sometime in November 1973, were you not?

A Right. I was pretty upset about that, too.

Q You were upset about that?

A Yes.

Q In what way?

A I thought he had no reason to come and interview us.

Q Didn't Mr. McNally explain his reason for interviewing you?

A After he had interviewed us he explained it.

H. Geibel-People- cross

A 054

Q After?

A After. After I asked him who he was.

Q Right.

A But nobody has a right to come to your door and do that to you, I don't think.

Q You don't think?

A Without ~~gix~~ identifying themselves.

Q Did Mr. McNally force his way into your home?

A He did not. No one forces their way into our home.

Q You invited them?

A That's right. Everybody who comes to the door is invited in.

Q And, in fact, it was a very cordial--

A It was, until we found out who he was.

Q And what happened after you found out who he was?

A Well, we were still ~~axial~~ cordial, but we didn't like it.

Q You didn't like it, but you still answered his questions?

A Of course we did.

Q And, as a matter of fact, didn't you tell Mr. McNally you were going to come back to New York?

A I said if I was able to I would come back.

H. Geibel-People-Cross

Q And didn't you say you would go ~~hake~~ back to see that they got their just desert?

A I don't think it was that, no.

Q Or ~~a~~ words to that effect?

A You~~x~~ are just putting words in my mouth.

I said I would go back and testify if I was asked and I've been asked.

Q And didn't you say you wanted to go back because these men were a ~~menax~~ menace?

A I doubt that.

Q You doubt that?

A I think anyone ~~x~~ that commits a crime should be on trial, and anybody that commits a crime against me I'm willing to testify.

Q I agree with you.

And didn't Mr. McNally tell you that this defendant was standing trial because--

MR. KREIDMAN. Objection.

MR. COIRO: Let me finish the question.

MR. KREIDMAN: Judge, I am going to object to what Mr. McNally said whey the defendant was standing trial. I'm going to object to it.

THE COURT: Yes, I see no basis for such a question, Mr. Coiro.

H. Geibel-People-Cross

MR. COIRO: Fine, Judge.

MR. ERIDMAN: I see Mr. Coiro's reasoning.

THE COURT: I beg your pardon, Mr. Kreidman?

MR. KREIDMAN: I'm sorry, sir. I object to the question and to the -- I object to the question, sir.

THE COURT: Would you like me to reconsider my ruling, Mr. Kreidman?

MR. KREIDMAN: No, sir, I would not.

THE COURT: In that case, I suggest you rephrain from any such further comments. Do I make myself clear?

MR. KREIDMAN: Yes, sir.

I ~~maxx~~ just thought the comment was improper; that's the reason I objected.

MR. COIRO: Judge, I don't want to add to it.

BY MR. COIRO:

Q Mr. McNally told you he was working for me, right?

A He did.

Q He also tol d you he was there at my request?

A He did.

Q Right?

A Right. He ~~xi~~ said he was in the neighborhood inves-

H. Geibel-People-Cross

tigating ~~and~~ someone else for you and this was a ~~at~~ side-line.

Q Right.

A That's exactly what he said.

Q Is the conversation coming back to you now?

A No. My husband does most of the talking.

Q In other words—

A I guess Mr. McNally would testify to that.

A In other words, you're telling me that you didn't do too much talking to Mr. McNally?

A Only when he asked me direct questions. My husband takes over.

Q Just as your husband took over in this situation, right?

A He took over to get those men's credentials, yes, he did, and I was very upset because he just came out of the hospital.

Q I recognize, Mrs. Geibel -- In fact, he had undergone some brain surgery; is that correct?

A That's correct.

Q And your husband walked these men down to the elevator, right?

A That's right.

Q And yet your husband was not able to identify

ads

144-****

A 058

5/13 Donnelly-People-Direct

us, Patrolman Green, myself and Patrolman Powers to check out room 612 and 613.

Q Did you go to room 613?

A Yes, I did.

Q And tell the members of the jury// what happened when you got to room 612?

A Well, we knocked on the door and someone answered, "Who is it?. We said it was police. He said, "What do you want?" and we said, "There was a number of burglaries in the building and that we thought either his room was burglarized or possibly could be burglarized, could we come in."

Q What happened?

A Well, there was a pause, then the door opened.

Q How long a pause was it, sir?

A Oh, about a minute, two minutes.

Q Did you hear anything in the room?

A We thought we heard shuffling.

MR. COIRO: Objection to what he thought he heard, if Your Honor please.

THE COURT: Sustained.

Q What did you hear, if anything?

A Well, this is two and a half years ago. At the time I thought I heard shuffling.

A58

5/14

Donnelly-People-Direct

MR. COIRO: I'm going to object again, if
Your Honor please, and move the answer be stricken.

THE COURT: Sustained.

The jury will disregard the answer of the
witness.

BY MR. KREIDMAN:

Q It was about a minute before the door was
opened, is that correct, sir?

A To the best of my recollection, yes.

Q Tell us what you saw when the door was
opened.

A There was a man standing there in his underwear.

Q Did you later ascertain his identity?

A Yes.

Q What is his name?

A James Doyle.

Q And what did Mr. Doyle do?

A He let us in.

Q Did he say anything before he let you in?

A He said that he was sleeping and that we woke him
up.

Q And did you -- tell us what happened when
he let you in.

A Then we walked in and we were looking around the

5/15

Donnelly-People-Direct

room. We looked under the beds and we saw Doyle looking over towards the closet.

Q By the way, you say Doyle -- what were the condition of the beds?

A Well, the bed nearest the window was made and the bed closest to the closet was messed up like someone was sleeping there. 1

Q You saw Doyle looking over to the closet?

A Yes.

Q Tell us whathappened.

A Well, I opened up the closet door to look in and I saw a hand by the shelf.

Q Now, you looked into the closet and you saw a hand by the shelf. What did you do when you saw that?

A I closed the door and I stated there's nothing here.

Q Was there anything in the closet besides a hand thatyou saw?

A Clothing.

Q And whatdid you do then?

A I motioned to my partner...

Q Which one are you referring to?

A Jimmy Greene I snapped my fingers and I go, we got one inthe closet. So he got ready, he took his gun out and we put Doyle against the wall and I said, "Come out

5/16

Donnelly-People-Direct

with your hands up." Then a party moved towards the door but the hand remained there.

Q Now, the party that moved -- in other words, the party moved towards the door?

A Yes.

Q And -- would you describe that closet, by the way?

A I guess it would be about -- it's a deep closet. As you open up the door you have the wall and then it goes towards the left. I'd say it's about eight feet.

Q Is that in length or width?

A In length.

Q And you say a party came out?

A Yes.

Q And do you know who that party was?

A Yes.

Q Who was that?

A Thomas LiPuma.

Q And what did you do with Thomas LiPuma?

A We put him up against the wall.

Q And when he came out did you notice anything in the closet?

A There was still another party in there.

Q How did you tell?

A61

5/17 Donnelly-People-Direct

A Because the hand ~~was~~ still there.

Q Then what did you do?

A I told the other party to come out.

Q And who came out then?

A Peter Raimondo.

Q When these two people came out did Doyle say anything?

A Who are these guys; never saw them before.

Q And then what did you do when you had all three of them?

A We gave them a quick frisk then I think we told them to empty their pockets out.

Q Now, I show you people's 5.

(Exhibit handed to the witness.)

Q I ask you if you have ever seen this before?

A Yes, this is a pill box. I have seen it before, yes.

Q Where for the first time did you see it?

A This -- when we asked them to empty their pockets this came from Raimondo.

Q I show you a set of keys.

(Handed to the witness.)

MR. KREIDMAN: I ask they be marked People's 6, for identification.

BEST COPY AVAILABLE

ads

149

A 063

5/18

Donnelly-Pepple-Direct

THE COURT: It will be so marked.

MR. KREIDMAN: Thank you, Your Honor.

(Received and marked People's exhibit 6,
for identification.)

(Continued on following page.)

j.k.

A63

Donnelly - People - Direct

BY MR. KREIDMAN:

Q Where did these come from?

A I believe those are the keys that came from Raimondo also.

MR. KREIDMAN: I would offer them, your Honor.

MR. COIRO: I would object, if your Honor please.

THE COURT: The objection is sustained at this point.

Q I show you People's 3 in evidence.

[Handing to the witness.]

Q Do you know where that came from?

A Yes, that came from a black attache case.

Q Came from a black attache case?

A Yes.

Q And where was this attache case?

A On the bed by the suitcase.

THE COURT: On the bed by what suitcase?

THE WITNESS: The brown suitcase, sir.

THE COURT: You haven't told us anything about a suitcase.

THE WITNESS: It was on the bed.

THE COURT: What was on the bed?

Donnally - People - Direct

THE COURT: The black attache case.

THE COURT: I see.

BY MR. KREIDMAN:

Q I show you this black attache case and ask that it be marked for identification.

THE CLERK: Number 7.

[THEREUPON, THE BLACK ATTACHE CASE WAS MARKED PEOPLE'S EXHIBIT NUMBER 7 FOR IDENTIFICATION.]

Q Is this the attache case that was on the bed, sir?

A Yes.

MR. KREIDMAN: I offer it in evidence.

MR. COIRO: I object, if your Honor pleases.

THE COURT: You say the -- there was a pin that you have been shown as Exhibit 3 that was in that black attache case?

THE WITNESS: Yes, sir.

THE COURT: The objection is overruled. It will be received.

[THEREUPON, BLACK ATTACHE CASE PREVIOUSLY MARKED PEOPLE'S EXHIBIT NUMBER 7 FOR IDENTIFICATION, WAS RECEIVED AND MARKED PEOPLE'S EXHIBIT NUMBER 7 IN EVIDENCE.]

Q Did you see anything on the bed, sir, besides

A 65

Donnelly - People - Direct

the attache case?

A Yes.

Q Besides the -- People's 7?

A Yes, a brown Tourister case or suitcase.

Q If I show you this suit case and ask that it be marked for identification People's 8.

[THEREUPON, SUITCASE WAS MARKED PEOPLE'S EXHIBIT NUMBER 8 FOR IDENTIFICATION.]

BY MR. KREIDMAN:

Q I show you People's Exhibit 8.

[Handing to the witness.]

Q Is that the attache case -- the suitcase that was on the bed?

A Yes, it was.

MR. KREIDMAN: I offer that in evidence.

MR. COIRO: May I examine on the voir dire, if your Honor pleases?

THE COURT: Yes, you may.

EXAMINATION ON THE VOIR DIRE

BY MR. COIRO:

Q Detective, where do you say this suitcase was?

A On the bed, sir.

Q And which was it on?

A 66

Donnelly - People - Direct

A The bed closest to the window.

Q In other words, the bed that hadn't been slept in?

A Yes, sir.

Q And what condition was it in when you saw it on the bed?

A It was open.

Q It was open?

A Yes, sir.

Q Would you say it was open like it is now [indicating]?

A No, sir.

Q How was it open?

A It was open wider because there was fur coats in it and the coats were not completely in. It was hanging out.

Q In other words, it was something like that [demonstrating]?

A Yes, sir.

MR. COIRO: Describing with the garments hanging out and the lid in a half-way position.

BY MR. COIRO:

Q Now, did you determine who owned this suitcase?

Donnelly-People-Cross

photograph.

THE WITNESS: Yes, sir.

BY MR. COIRO:

Q How long after the defendants were arrested would you say that the photograph was taken?

A Approximately an hour and a half.

Q Hour and a half?

A About.

Q And that would be approximately how long after yourself, Debona, Newham and the sergeant and Green were at the Geibels' apartment at Room 1710?

A How long -- This picture was taken after we were at--

Q Right.

A About two hours.

Q I ask you, sir, is if in ~~game~~ that lineup there is not Patrolman Debona?

A Yes, he is in the lineup.

Q He is in the lineup?

A Yes, he is.

Q So Mrs. Geibel saw him in uniform?

A Yes.

[Q Then they put him in civilian clothes in a lineup; is that correct?

A Yes.

A 68

8/14

Donnelly-People-Cross

A Yes, sir, I was.

MR. COIRO: I now offer it in evidence, if
Your Honor please.

MR. KREIDMAN: No objection.

THE COURT: Received.

(Received and marked Defendant's exhibit C,
in evidence.)

BY MR. COIRO:

Q Detective Donnelly, defendant's exhibit C,
in evidence, depicts a photograph of a line-up, is that
correct?

A Yes, sir, it does.

Q And Thomas LiPuma is in that line-up, is that
correct?

A Yes, sir, he is.

Q And isn't it a fact that the other individuals
in that line-up are all police officers?

A Yes, sir, it is.

Q Detective Donnelly, what time did you arrive
at room 613?

A Approximately 8:45, 8:50.

Q Before arriving at room 613 had you been to
room 612?

A No, sir, I had not.

8/15

Donnelly-People-Cross

Q Before going to 613 did you search any other rooms in the hotel?

A No, sir, I did not.

Q You went directly to room 613?

A I was so ordered, yes.

Q You were so ordered. Now, you came to 613, is that correct?

A Yes, sir.

Q Tell me exactly what happened when you arrived at room 613?

A I knocked on the door. A voice said, "Who is it?" I stated it was the police. He said, "What do you want?" I said something to the effect that there were a number of burglaries committed in the building and that we have reason to believe that either your room was burglarized or would be burglarized.

Q Now, when you had this conversation was the door open or closed?

A Closed, sir.

Q The door was closed?

A Yes, sir.

Q When was the door opened?

A About a minute later.

Q About a minute later. And did you walk right

A70

8/16

Donnelly-People-Cross

into the room at that point?

A No, I had conversation with the man that opened the door.

Q And the door was opened, is that correct?

A Yes, sir.

Q Now, while the door was opened could you see into the room?

A No, sir.

Q You could not see into the room?

A I could see into the room partially.

Q What portion of the room could you see?

A I could see a dresser and I could see a window and I could see curtains.

Q Now, this dresser that you saw, where was it?

A It was on the left hand side of the wall.

Q Well, from where you were standing at the door were you able to see the beds?

A I may have been able to see the corner of one of the beds, I'm not sure.

Q How far open did this man -- question withdrawn
How far was the door open?

A It was opened. I guess you call it fully.

Q Open all the way?

A Yes.

1

A71

8/17 Donnelly-People-Cross

Q And where were you standing physically at that point?

A In front of the door.

Q In front of the door?

A Yes, sir.

MR. COIRO: May I have this marked as defendant's D, for identification, with Your Honor's permission?

THE COURT: So marked.

(Received and marked defendant's exhibit D, for identification.)

Q Detective Donnelly, I ask you to look at Defendant's D, for identification.

(Exhibit handed to the witness.)

Q I ask you, sir, if you yourself drew that diagram?

A Yes, sir, I did.

Q And that is a diagram of room 613, is that correct?

A Yes.

Q To the best of your ability?

A Yes; definitely, yes.

Q And it's not to scale?

A No, I'd say definitely not.

8/18

Donnelly-Pepple-Cross

MR. COIRO: I now offer it in evidence, if

Your Honor pleases.

MR. KREIDMAN: May I have a brief voir dire,

Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KREIDMAN:

Q Detective Donnelly, is this the original diagram you drew?

A Yes, sir.

Q This is the original that you drew?

A I believe so, yes.

Q I ask you to examine it. Both sides please.

A Yes, this is my drawing.

Q It's your drawing but is it your original?
Would you examine the other side, sir?

A Yes.

Q When did you draw that, if you know?

A After I discussed the case with District Attorney Andrews, Assistant District Attorney Andrews. He thought I should go back to the hotel and draw a diagram of the room and Jimmy Green and I went back and we drew a diagram of the room for him.

MR. KREIDMAN: I have no objection.

8/19

~~Donnelly-People-Cross~~

THE COURT: Received.

(Received and marked defendant's exhibit D,
in evidence.)

BY MR. COIRO:

Q Detective Donnelly, I would ask you, sir,
with His Honor's permission to mark on exhibit D exactly
where you were standing when the door was opened by
Mr. Doyle.

THE COURT: What do you want him to mark there,
Mr. Coiro?

MR. COIRO: I want him to mark it on exhibit
D.

THE COURT: What do you want marked?

MR. COIRO: His initials.

THE COURT: His initials?

MR. COIRO: Yes.

THE COURT: Very well.

(Witness completes.)

BY MR. COIRO:

Q How many entrances are there to this apartment
or hotel suite?

THE COURT: I've heard no testimony here of
a suite, Mr. Coiro.

Q Well, how many entrances are there to room

8/20

Dennelly-People-Cross

613, detective?

A There's one entrance where I was standing.

Q Right.

A And there's another door in the suite that was locked.

Q Does that door lead on to the hall?

A I don't know, sir.

Q You don't know where that door leads?

A No, sir.

THE COURT: Is it a door going to a hallway or to an adjoining room?

THE WITNESS: I don't know, sir. There was a door.

THE COURT: Was it a door adjacent to an outer hallway or adjacent to a wall?

THE WITNESS: Adjacent to a wall.

THE COURT: It's not adjacent to the hallway?

THE WITNESS: No, sir.

THE COURT: So it's not a door to the hallway, it goes to another room?

THE WITNESS: I assume so.

(Continued on following page.)

9K1

203

Donnelly - People - Cross

THE COURT: It doesn't go into the hallway?

THE WITNESS: No, it does not.

BY MR. COIRO:

Q What happened next after Mr. Doyle opened the door, detective?

A He entered into the room. I looked underneath the beds and I observed the window open. I looked out the window and I saw Doyle looking towards the closet.

At this time Richie Powers MM walked past me and he went over by the bed by the window. I opened up the closet door.

Q Can I stop you there, detective.

Detective, prior to entering room 613, did you know -- question withdrawn.

Before you entered room 613, had you spoken to Mr. Robinson?

A I think so, yes.

Q And did Mr. Robinson tell you or one of your brother officers, if you know, what had been taken from his apartment?

A Yes. At the time he was down the lobby, and he had a piece of paper in his hand with the things that were taken from his room, and he was very upset.

Q Now, you entered -- you just told this jury

A 76

Donnelly - People - Cross

you entered the apartment, you did that which you did do and your brother officer did what he did, right?

A Two brothers officers, yes.

Q At that point did you place James Doyle under arrest?

A Pardon me?

Q At that point did you place James Doyle under arrest?

THE COURT: At what point, Mr. Coiro?

Q When you first entered the room.

A No, sir, I did not.

Q When you first entered the room, this case was on the bed, was it not [indicating]?

A Yes, sir.

Q And it was open with coats sticking out of it, was it not?

A Yes, sir.

Q In fact, you described it as a leopard coat and mink coat, right?

A No, sir. I described it as a leopard coat and a fur coat.

Q And a fur coat?

A Yes.

Q At that point when you saw that case on

ATT

Donnelly - People - Cross

the bed with the coats sticking out, did you place Doyle under arrest?

A No, sir, I did not.

Q You said nothing to him, right?

A Pardon me?

Q You said nothing to him?

A No.

Q And the case was in full view, was it not?

A Oh, yes.

Q Now, what happened next?

A I opened the closet door and I observed a hand.

Q Can I back up one second, detective. What directed your attention to the closet?

A The action of Doyle.

Q Tell the jury what the action was.

A He kept on looking towards the closet and he looked a little nervous.

Q Well, did you know he was, in fact, looking at the closet?

A Pardon me?

Q Did you know, in fact, he was looking towards the closet?

A He was looking at the closet.

Q He was looking in the direction, right?

Donnelly - People - Cross

A Yes.

Q -- what was he wearing?

A Blue slacks and I believe a white shirt.

Q - Could he have had on a tie?

A It's possible.

Q What did he wear at the line-up in the station house?

A He had on blue trousers, a white shirt, a blue jacket and a tie.

Q Right. In fact, it was a suit, such as I am wearing?

A Yes.

Q Pants and jacket match?

A Yes.

Q Did he ever change his clothes between the time he left the hotel and the station house?

A Not to my knowledge.

Q And you took him to the station house, right?

A Yes.

Q And you were with him in the station house?

A Yes.

Q Now, by the w-ay, that night at the station house, you also spoke to Mr. Geibel, did you not?

~~REDACTED~~ 216

Donnelly - People - Cross

opened the door to this apartment and there were two coats in this bag [indicating]?

A Yes, sir.

Q A leopard and a MM fur coat?

A Yes, sir.

THE COURT: Indicating People's Exhibit 10 in evidence -- I am sorry, People's Exhibit 8 in evidence.

BY MR. COIRO:

Q That's correct?

A That's correct.

Q And he just -- you asked him if you could come in?

A Yes, sir.

Q And he said, "You may enter"?

A Yes.

Q By the way, when you spoke to Mrs. Geibel that evening in the 17th Precinct, did you ask her how much time she had to observe the defendant LiPuma?

A I don't believe so, sir.

MR. COIRO: Judge, would you bear with me for one moment?

THE COURT: Yes.

Q Detective Donnelly, did you fill out all of

K14

259

Powers - People - Direct

A No.

Q -- as Donnelly and Green, would you?

A No, sir.

Q Okay. Did you respond to a location, sir?

A Yes, I did.

Q What location did you respond to?

A The Berkshire Hotel.

Q When you got to the hotel, what did you observe, sir?

A I was directed by the sergeant from the 17th Precinct to assist two members of the Emergency -- of the 17th Precinct on an investigation in room 613.

Q When you got to room 613, sir, what happened?

By the way, who were these ~~MEMBERS~~ other two men who you went with?

A They are Patrolman Donnelly and Patrolman Green from the 17th Precinct.

THE COURT: I am sorry. You went to the room with them?

THE WITNESS: Yes, I did, your Honor.

BY MR. KREIDMAN:

Q Tell us what happened when you got to ~~MM~~ room 613, sir. ↓

A Patrolman Donnelly knocked on the door. A voice

A81

Powers - People - Direct

answered, "Yes."

Patrolman Donnelly said, "We're New York City police. WE'd like to speak to you."

And there was a silence, and then, "Want's it all about?" I think were some of the words used, and one of us mentioned that we wanted to make sure that you were all right, there had been trouble in the building and we would like to make sure that you were all right.

After a brief moment, the door opened, a man stood there in boxer shorts. Patrolman Donnelly engaged him in a conversation.

I went past the man. I went to the MM end of the room which the window was open. There were drapes. I looked behind the left m drape.

Q Let me get one thing clear. The window was open?

A That's correct.

Q And you looked behind the drapes?

A That's right.

Q And do you know who answered the door?

A At the time I didn't know who he was, but later I found his name was James Doyle.

Q And what happened next?

K16

Powers - People - Direct

A Well, I was about to kneel down to look under the bed when, as I recall, Patrolman Donnelly said, he spoke, "Come out of that closet." And with that, I drew my revolver. I stood MMMMM where I was at.

Q Yes.

A Two men emerged from the closet. I covered the two men plus the thing that opened the door while Patrolman Donnelly spoke to them, interrogated them.

Q All right, officer. Did both men come out at the same time?

A Well, one came out, I think one -- one came out and the other one was a -- a little pause and then the second one came out.

Q Now, how were the two men that came out of the closet, how were they dressed?

A The best of my recollection, white shirt and pants on.

Q Did you see any jackets on them?

A No, I don't think they had jackets on. I'd say no.

Q And Doyle didn't have a jacket on, did he?

A Doyle had no clothes on, only his underwear.

Q Now, when you got to the position by the open window, did you notice anything on the bed?

A Yes. there was a small suitcase which was partially

K17

262

Powers - People - Direct

openMM.

Q What did you see in there?

A I saw sticking out of the corner a piece of leopard skin.

Q Did you see -- go ahead.

A It could have been a coat combined with leopard skin or it could have been two coats.

MR. COIRO: Objected to. Objected to what it could have been, your Honor.

THE COURT: Overruled.

BY MR. KREIDMAN:

Q Will you repeat that answer?

A Well, it was --

THE COURT: Excuse me. I see no need to repeat the answer, Mr. Kreidman.

Q Tell us what happened then?

A Well, when the third man came outM-- rather, when the three of them were lined up against the wall, I covered them with my revolver and stayed at my position until the moment the ~~was~~ sergeant arrived.

He had been called. In fact, I called him. I reached down and picked up the phone, "There is a sergeant in the lobby. This is the police. Have him come up here forthwith." And I stayed in my position

A84

Powers - People - Direct

where I was at while the officer Donnelly, I believe, and Patrolman Green, they interrogated them or went through their clothes or had their stuff placed on the bed.

This is two and a half years now. Had their ~~stuff~~ stuff in their pockets placed on the bed. And when the sergeant arrived, he observed ~~a~~ there was some ammunition involved.

MR. COIRO: That's objected to, if your Honor please, what the sergeant observed.

MR. KREIDMAN: Don't tell us what the sergeant observed.

THE COURT: ~~MM~~ Sustained.

THE WITNESS: The sergeant--

MR. KREIDMAN: Don't say anything what the sergeant said.

BY MR. KREIDMAN:

Q Were you thereafter sent out of the room?

A Excuse me?

Q Were you sent out of the room?

A Yes, I was.

Q And where did you go?

A I went to the rear yard of the hotel.

Q What happened then?

Powers - People - Direct

A I was directed to the rear yard of the hotel for a search.

Q You made a search?

A Yes.

Q Okay. And who made the arrest in this case, sir?

A Patrolman Donnelly and Patrolman Green.

Q And --

MR. KREIDMAN: No further questions.

THE COURT: Cross-examination.

MR. COIRO: Yes, your Honor.

Mr. Kreidman, do you have any Rosario material?

MR. KREIDMAN: No. He hasn't testified before.

MR. COIRO: Fine.

CROSS EXAMINATION

BY MR. COIRO:

Q Patrolman Powers, when you arrived at room 613, exactly in what position were you in front of that door?

A I was next to Patrolman Donnelly.

Q Were you standing side by side in the ~~entrance~~ entrance to the door?

Powers - People - Direct

A I'd say we were both facing each other at the door.

Q Facing each other at the door?

A Yes.

Q Now, after sometime, you said, you announced yourself as police; is that correct?

A That's correct.

Q And there was some colloquy between you and the man inside, between the three of you and the man inside?

A That's correct.

Q Is that correct?

A Yes.

Q Then you said there was some silence, right?

A Yes.

Q How long was there a period of silence?

A Well, I'd say about a minute.

Q About a minute?

A Yes. Maybe about fifty seconds or a minute.

Q Then the door was opened?

A That's correct.

Q Now, during that minute of silence, did you hear anything at all from inside the apartment?

A No, I didn't.

K21

266

Powers - People - Direct

Q Not a thing?

A No.

Q And you were standing right next to Donnelly face to face, right?

A Yes.

Q Did you hear any shuffling inside the apartment?

A No, I didn't.

Q You didn't?

A No.

Q Now, you said the door was ^{opened,} ~~opening~~ right? ↓

A Yes.

Q Who was the first one into the apartment?

A Well, I'd say it was Patrolman Donnelly. He engaged the man with a conversation about ~~a~~ foot into the door, into the doorway, a foot and a half.

[Continued on the next page.]

A88

Take 13

1gl Powers-People-Cross²⁶⁷

BY MR. COIRO:

Q And then your testimony was , correct me if I am wrong, sir, that "I walked past him into the ~~xx~~ apartment to the open window"?

A That's right.

Q

Q In other words, you just pushed your way into that apartment?

A No, I'm sorry, I didn't push my way in.

Q Not that ~~xx~~ you physically pushed ~~xx~~ somebody, but the door was open and you stepped right through the apartment -- right through the doorway into the apartment?

A That's correct.

Q That's correct, right?

A I walked in.

THE COURT: I'm sorry, I didn't hear you.

THE WITNESS: I walked in.

BY MR. COIRO:

Q And you walked in without any invitation, didn't you?

A Without invitation?

Q Yes.

A No.

Q In other ~~xxxxxx~~ words, Mr. Doyle said~~xxxx~~ "You may enter?"

Powers-People-Cross

A Mr. Doyle didn't say anything.

Q You just walked in?

A Wehn we had the conversation -- that's correct. A

Q Did you have a warrant?

A No.

Q And your brother officers ~~talked~~ followed you in, right?

A That's correct.

Q Did you go to any other apartment besides 613?

A Not I.

Q Not you?

A No.

Q Did Green also follow you ~~tax~~ and Donnelly into the apartment?

A No, Green did not follow me in. Green stayed at the door.

Q Green stayed at the door, just you and Donnelly went in?

A That's correct.

Q And then you walked over to this window and you f knelt down?

A I didn't kneel, no.

Q What did you do?

A I flooked behind the first drape, I looked behind the

1g3

269

Powers-People-Cross

Redirect

second drape. I was about to kneel, I said, when I heard Patrolman Donnelly say, "Come ~~at~~ out of the closet."

Q And that's when the men came out of the closet?

A That's correct.

MR. COIRO: I have no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. KREIDMAN:

Q When the two men came out of the closet, what did Mr. Doyle say?

MR. COIRO: That's objected to as improper redirect.

THE COURT: Overruled.

BY MR. KREIDMAN:

Q What did Mr. Doyle say?

A It was something like, "What are you doing here? Who are you?" Or something, I can't recall exactly this. "I don't know them" or ~~something~~ something, something to that effect. It was a surprise.

Q And when Officer Donnelly engaged Mr. Doyle in conversation, sir, did he ask for permission to come into the room?

A I didn't hear what went on when -- We had stated to

A91

lg4

270

Powers-People-R/edirect
Recorss

the man behind the door that we thought he might be in trouble. This is the reason we wanted to come in because there had been a problem in the building and when he was hesitating opening the door, you got to suspect that the man might be held hostage.—

MR. COIRO: Objected to, what he's got to suspect, if your Honor pleases.

THE COURT: I'll allow it.

BY MR. KREIDMAN:

Q Got to ~~xxx~~ suspect what?

A There have been numerous cases we've been on there. x I've been on that type of jobs. You've got to find out if he's alone or he's in trouble. I've done this for years. I've been in the Emergency Service Force.

Q And you walked into the room; is that correct?

A That's correct.

Q And Donnelly was behind you?

A Yes.

MR. KREIDMAN: I have no further questions.

RE CROSS EXAMINATION

BY MR. COIRO:

Q When the man answered the door, he was standing there in his shorts, right?

A That is correct.

A 92

Powers-People-Recross

Q Was he ~~not~~ screaming, yelling or frightened, or give you any indication he was in trouble?

A Yes, he did.

Q What did he say?

A He didn't say anything. He — There was indications of trouble with the fact he hesitate in opening the door. His voice and ~~xxxxxx~~ manner through the door and the way he opened the door.

Q In other words, every time someone was hesitant in answering the door, you figure he's in trouble?

A No, no, I don't.

Q You don't? But you did in this instance?

A Right.

Q And yet ~~xxxxxx~~^{when} the door was opened and the man was standing before you in his shorts and he said, "What's this all about?", you brushed past him?

A I don't know if you'd call it "brush past", mister. I wanted to make sure the gentleman was all right. I've done this before and I was out to see that he wasn't hurt.

THECOURT: Excuse me. Exactly what transpired ^{he} when, as ~~xxx~~/opened the door, did he say something to you when he opened the door, or did you say something to him as soon as he opened the door?

Powers-People-Recross

THE WITNESS: ~~Em~~ When he opened the door, I can't recall the exact words.

THE COURT: In substance.

THE WITNESS: Patrolman Donnelly engaged in conversation. It went something like, "Are you all right, mister? Anybody in here that's not supposed to be?" Or something to that effect. We had been looking for people in the building that had ~~been~~ committed a crime.

THE COURT: What did he say in response to your -- Patrolman Donnelly?

A THE WITNESS: He said something that he was sleeping.

THE COURT: And what did you do during this time?

THE WITNESS: I went right past the two of them.

THE COURT: I see.

BY MR. COIRO:

Q You went right past?

A Right past the two of them.

Q The man wasn't bleeding, was he?

A No.

Q The man wasn't bound, was he?

A94

7

14/1 q

Colloquy

THE COURT: I'm sure there are more closely analagous cases than that, Mr. Kreidman. If the apartment is searched to the detriment of why seized holding whether or not there is standing to challenge the search.

MR. KREIDMAN: There is another aspect, Your Honor, of a motion within trial and The Court can rule based on the evidence, based on the consent of Mr. Doyle and...

THE COURT: I would be inclined on the basis of what I have heard, Mr. Doyle didn't consent to a search of his apartment.

MR. KREIDMAN: Then also under People -v- Goldman, 19 New York Second affirming Justice Ringel on the testimony of Officer Powers, the police common law right to search under emergency situations.

THE COURT: There wasn't any emergency situation here, Mr. Kreidman.

MR. KREIDMAN: The officer just testified...

THE COURT: What was the emergency situation?

MR. KREIDMAN: He thought the man was in trouble.

THE COURT: There was no basis for that

A 95

14/2

Colloquy

conclusion. I'll find that as a matter of law as well, Mr. Kreidman.

You're not seriously suggesting when he knocks on the door of the room and the man hesitates to open it and then he opens in his underwear he has a right to barge in and search the room because he thinks the man is in trouble?

MR. KREIDMAN: He heard there were burglars in the hotel.

THE COURT: And so he therefore has a right to go into every room in the hotel and search every room in the hotel?

MR. KREIDMAN: That was in his mind.

THE COURT: I'm not concerned with what was in his mind, I'm concerned with what the law is.

MR. KREIDMAN: The law deals with what a reasonable man thinks.

THE COURT: I don't find that reasonable, Mr. Kreidman;

MR. KREIDMAN: All right, sir. If that's your decision that's your decision. 1

THE COURT: I suggest you address yourself to the standing of whether ~~or~~ such a motion could be made at this point or third whether such a

13

Colloquy

was stating to the jury that his client was not a person aggrieved by an illegal search and seizure.

It would appear that his statement -- from my interpretation of it, Your Honor, might indicate to the jury that he was just an innocent interloper in....

THE COURT: Mr. Kreidman, he couldn't very well say to the jury that the property was his or that he was a person aggrieved or that he had some interest in the property without admitting his guilt, could he? You certainly wouldn't expect him to make that statement in his opening, would you?

MR. KREIDMAN: Of course not.

THE COURT: What could he say with respect to it?

MR. KREIDMAN: I would like The Court as one of the preliminary factors to ascertain what is the ground wherein he states he's a person aggrieved?

THE COURT: Mr. Kreidman, in that regard if [↓] you've read the Jones case, if you've read the Simmons case, if you've read the Peliciano case, the law is absolutely crystal clear that the defend- and has standing to bring this motion. L

MR. KREIDMAN: Well, judge, may I cite to The

ads

297

14

Colloquy

Court certain cases if I might?

THE COURT: Yes. I would like you to cite any cases.

Have you read the Jones case?

MR. KREIDMAN: Yes, I have. I've done a paper on it, as a matter of fact.

THE COURT: What does it hold?

MR. KREIDMAN: The Jones case, and it has to be read in light with Wong Sung, Wong Sung is also another case that must be read but the applicable statutes, the applicable New York cases would be People v. Safaro, a 1967 case, 21 New York Second.

THE COURT: What does that say? Have you read the Peliciano case; Mr. Justice Asch's decision in Peliciano?

MR. KREIDMAN: ~~Indignified~~ Justice Asch of what court?

THE COURT: Of the Supreme Court, this court.

MR. KREIDMAN: I'm talking about Court of Appeals cases, sir.

THE COURT: Yes, I'm aware of that.

Have you read Simmons against United States?

MR. KREIDMAN: Surely.

THE COURT: What does that hold?

ads

298

15

Colloquy

MR. KREIDMAN: Off the top of my head I can't give you the Simmons holding. That was Katz, the telephone booth, I believe.

THE COURT: Do you have a copy of the Safaro case?

MR. KREIDMAN: I have Section 710, sir, if I may.

THE COURT: I have section 710 as well.

719 what?

MR. KREIDMAN: Point 20, subdivision five.

THE COURT: You don't have the case here, I assume?

MR. KREIDMAN: I can't carry everything down, sir.

THE COURT: I managed to carry six cases myself from 60 Centre Street. I hope you could bring up whatever cases you have.

MR. KREIDMAN: I have them.

THE COURT: I suggest you get them forthwith.

MR. KREIDMAN: Judge, here is what I have.

Page 269 of the C.P.L., People v. Safaro....

THE COURT: Have you read the Stojack case also cited at page 269, the third case down?

MR. KREIDMAN: Yes, sir.

A99

Colloquy

THE COURT: Have you read that?

MR. KREIDMAN: Stojack I have not read.

THE COURT: I suggest you read it. It holds contrary to the position you have just advocated.

MR. KREIDMAN: Let me give you the other case I have. People v. Estrada. That would be on page 270.

THE COURT: Mr. Kreidman, the cases are absolutely crystal clear in New York that where the an element of the crime is possession the person making the motion need claim neither that the material was in his possession nor that the apartment in which the material was found was his apartment.

MR. KREIDMAN: But it must claim that he was aggrieved by it, sir. It must give some factual basis.

THE COURT: He's aggrieved because you're introducing it against him to convict him of the possession counts. He quite clearly is aggrieved by the property.

MR. KREIDMAN: Then how does The Court reconcile People v. Safaro on that matter?

THE COURT: Just get People v. Safaro up here and I'll reconcile it very simply to you.

Colloquy

Safaro.

THE COURT: I am talking about this case. Now will you please distinguish that case, if you can. Shall I read it to you again?

I quote again, this is the United States Supreme Court, "When, as in Jones, possession of seized evidence is itself an essential element, an essential element of the offense charged, with which the defendant is charged, the Government is precluded from denying that the defendant has the requisite possessory interest to challenge the admission of the evidence."

MR. KREIDMAN: Sir, the defendant is charged in the alternative~~ms~~. One cannot be convicted of grand larceny and criminal possession--

THE COURT: Isn't possession-- the whole basis for your counts 4, 5, and 6 of the indictment constructive possession from which you intend to convict this defendant of burglary, recent possession of stolen property? Isn't the possession an essential element of the burglary count?

MR. KREIDMAN: Yes. sir. It's not an element of the burglary count. It's a piece of

A/01

Colloquy

were, but I stand unpersuaded, Mr. Kreidman.

MR. KREIDMAN: May the People just--

THE COURT: I am now holding, as a matter of law, the defendant has standing to bring this motion.

I rely upon Jones against The United States, People against Cefaro, NY 21, New York Court of Appeals, United States against Price 447 Fed. 2nd 423# and People against Feliciano, which is 70 Mis. 2nd 83.

Now, having disposed of that issue, Mr. Kreidman, there remains the question of the -- making the motion during trial.

What is the District Attorney's position with regard to that?

MR. KREIDMAN: Well, we cite, your Honor, to the Court, 710.40 when made and determined--

THE COURT: Yes, Mr. Kreidman; go ahead.

MR. KREIDMAN: The motion may be made for the first time during trial, but only to previous unawareness of facts constituting the basis of which other factors the defendant did not have a reasonable opportunity to make the motion before trial.

THE COURT: Yes, the defendant's position is he did make the motion before trial.

Celloquy

MR. KREIDMAN: But he obviously waived it, sir. He went right into the trial without bringing it to the Court's attention or the District Attorney's attention.

THE COURT: Assuming that ~~xxxx~~ his statement of what occurred is accurate, and assuming that Mr. Coiro was erroneous when he advised this Court that he ~~kxx~~ knew of only one motion, how is the District Attorney ~~xxxxxxx~~ prejudiced by permitting the defendant to have this issue litigated at this point?

MR. KREIDMAN: Because he's waived it, sir, right in the middle of the trial.

THE COURT: That's how you're prejudiced?

MR. KREIDMAN: Certainly, sir.

THE COURT: How are you prejudiced?

MR. KREIDMAN: Let's assume, sir, that the defense wins ~~ixix~~ its motion--

THE COURT: He didn't knowingly ~~wix~~ waive it, Mr. Kreidman.

MR. KREIDMAN: I would suggest he did. 1

THE COURT: Mr. Coiro didn't know about it. He wasn't in court when the motion was made. He says it was his partner that made the motion.

Colloquy

MR. KREIDMAN: He's responsible for the ~~right~~ litigation of this matter, your Honor. He's waived it.

THE COURT: He may technically be responsible, but I gather it's his position that he was unaware that such a motion was, in fact, pending.

MR. KREIDMAN: The People are prejudiced for several reasons. We brought in elderly people, if the Court will listen, elderly people from Arizona.

Assuming he wins the motion~~to~~ to suppress, there is a mistrial--

THE COURT: Why is there a mistrial?

MR. KREIDMAN: All this evidence is before the jury.

THE COURT: All what evidence before the jury? I haven't heard any motion for a mistrial.

Are ~~a~~ you going to move for a mistrial?

MR. KREIDMAN: I'm not going to move for a mistrial.

THE COURT: I didn't hear Mr. Coiro move for a mistrial.

Mr. Coiro, is it your intention to move for a mistrial if the motion to suppress is granted?

- - -

THE COURT: Mr. Kreidman.

MR. KREIDMAN: Sir, I would...

THE COURT: Mr. Kreidman, did you just hear what Mr. Coiro said?

MR. KREIDMAN: That's one answer that he gave. I heard what he said.

THE COURT: Is there another answer?

MR. KREIDMAN: Yes, sir, the statute.

THE COURT: It says or other factors.

MR. KREIDMAN: What other factors are there, sir?

THE COURT: He's just explained the factor  that his partner made the motion to join; he was unaware of it. Now, should a defendant for that reason alone, if he has a substantive right that goes to the heart of the People's case, be deprived of his opportunity to have that right litigated on that technical ground?

MR. KREIDMAN: I would argue, yes.

THE COURT: That is the sole basis for your argument?

MR. KREIDMAN: That there's a waiver, yes, sir. There has been no evidence...

THE COURT: What is the prejudice to the

ads

325

4/2

Colloquy

District Attorney to allow him to litigate this at this time? Will you state to The Court what prejudice the District Attorney has suffered if I permit this matter to be litigated at this time?

(Pause.)

THE COURT: The record will reflect a long silence on the part of the District Attorney.

I gather you are not prejudiced in any way.

MR. KREIDMAN: Except it's a violation of the statute, sir, 710.40.

THE COURT: Now, Mr. Coiro, I am concerned about this question of allowing you to proceed with this motion now and then your claim that you have been prejudiced by the fact that there has been testimony about ~~that~~ the items that were found in this room.

MR. COIRO: Yes, Your Honor.

THE COURT: I'd like to hear you with respect to what your position is in that respect and what the defendant's position is in that respect.

MR. COIRO: Judge, I have discussed the matter with my client Mr. Lipuma. Judge, I feel that I am -- I have urged it to Your Honor, I thought I was entitled to the motion to suppress and because

of the evidence that was found.

As far as the testimony that has come before this jury I state unhesitatingly without reluctance to Your Honor that even should I lost on the motion to suppress this evidence that I will not and I state it categorically for The Court move for a mistrial based on the evidence that has come before this jury.

THE COURT: Suppose you win the motion?

MR. COIRO: Judge, if I win the motion then I feel that there would be no case as against this defendant as far as counts four, five and six are concerned.

THE COURT: There would be no case against him as far as four, five and six is concerned. There certainly would be a case with respect to counts one, two and three.

MR. COIRO: Judge, if I might take issue, not even issue with Your Honor, I think as far as counts two and three are concerned I think that that would fall also.

THE COURT: Well, I don't recall. The only items that Mrs. Geibel stated were stolen from her room were a pill box and some change.

ads

327

A 108

4/4

Colloquy

MR. COIRO: Correct, Your Honor.

THE COURT: There has been no testimony about the change. Has there been testimony as to the pill box? Was the pill box found in that room?

MR. KREIDMAN: Yes, sir. It was found on the person of one of the defendants Raimondo.

MR. COIRO: I believe that's what the police officers testified.

THE COURT: I assume that would be suppressed as well.

MR. COIRO: Yes, Your Honor.

THE COURT: Very well.

I'm not prepared to say that on the basis of the testimony of the complaining witness that she found the defendant in her room and that she subsequently discovered that there was a pill box missing from her room that that would not be sufficient to convict the defendant of stealing the pill box, Mr. Cotto.

MR. COIRO: Yes, Your Honor, except that as I recall the testimony, Judge Fraiman, the police officer testified that this pill box was found upon the defendant Raimondo.

THE COURT: Yes.

A108

Colloquy

MR. COIRO: And there is, as Your Honor says, the testimony that she did see him in the room.

THE COURT: If you'd like to introduce in evidence, assuming I grant the motion to suppress, if you like to submit in evidence to contravert the larceny charge it wasn't found on your defendant's possession it was found in the possession of Raimondo who was hiding in the closet with your defendant, you are free to do so.

MR. COIRO: Judge, I don't assume to do that.

THE COURT: I didn't think so.

What I am interested in, Mr. Coiro, is what is your position with regard to the first three counts of the indictment. I understand you have a legal argument that there is no case against your client with regard to counts two and three.

MR. COIRO: Correct, judge.

THE COURT: Not indicating that I agree with that position but I indicate you have a legal argument with respect to that.

What I am concerned about is what you and your client's position is should I grant the motion and I submit to the jury counts one, two and three.

MR. COIRO: Judge, I intend to have the

A109

5

Col-oquy

Jury decide them.

THE COURT: Is it your position that your client has been unfairly prejudiced by the introduction into evidence of testimony concerning the leopard coat and the fur coat and also the pill box?

MR. COIRO: No, I would not take that position. I say that he has not been prejudiced by that.

THE COURT: And you feel that you would not have a basis for a motion for a mistrial and would not be prepared to so move?

MR. COIRO: That's correct, Your Honor.

THE COURT: Is that the position of your client?

MR. COIRO: That's his position, Your Honor.

THE COURT: You're waiving any right you may have to subsequently claim that you were prejudiced by the introduction into evidence of that pill box and the testimony with regard to the other items that were found in the apartment?

MR. COIRO: Yes, Your Honor.

THE COURT: And is that the position of your client?

THE DEFENDANT: Yes, sir.

A 110

THE COURT: In view of the fact that I think^V that the District Attorney would be sorely prejudiced if it were necessary declare a mistrial in this case, in view of the age of his complaining witness and the fact that they have come from several thousand miles away to testify in this trial, the fact that at this stage he has practically completed the presentation of the People's case and further view of the fact that this matter was not disposed of prior to trial by reason of the negligent failure of defense counsel to advise The Court in advance of trial in response to The Court's specific questions as to whether any motions were pending, that there were no motions pending with regard to the suppression of physical evidence; it seems to me that unless defendant was fully prepared to waive any possible claim of prejudice he might have by the introduction into evidence of this matter The Court would under no circumstances consider the determination of a motion to suppress at this stage of the trial.

In view of the express waiver of any such claim of prejudice by the defense counsel and by his client The Court will grant the defendant an oppor-

tunity to have the motion to suppress which was apparently made prior to trial resolved at this 1 point.

The Court has further found that the defendant has standing to make that motion as a person aggrieved pursuant to the cases heretofore cited by The Court.

We have now had the testimony of the two witness as to the circumstances under which -- the two police officers that is -- as to the circumstance under which police officers entered the apartment, observed and seized the evidence contained therein. Detective Donnelly stated in his testimony that after knocking on the door and identifying himself that Doyle let him into the apartment.

On the other hand, Police Officer Powers testified that he went into the apartment without the express consent of Doyle as soon as the door was opened; in fact while Doyle was still engaged in conversations with Donnelly and that he Powers was the first person into the apartment and therefore was the first person to observe the fur coats on the bed.

Now, do you wish to offer any further evidence, Mr. Kreidman or Mr. Coiro, on this motion to suppress?

ads

332

9

Colloquy

MR. KREIDMAN: Yes, Your Honor, surely.

The people would have to call members of the hotel who summoned the police and gave them the consent and at their ~~xxxx~~ behest the police went into these apartments.

THE COURT: Mr. Kreidman, are you seriously suggesting that the hotel owners specifically gave the police permission to go into room 612 on this night in question?

MR. KREIDMAN: Yes, sir, I am.

THE COURT: Without the consent of the occupants?

MR. KREIDMAN: Yes, sir.

THE COURT: Was this an express grant of authority to the police by some hotel employee?

MR. KREIDMAN: I believe so.

THE COURT: And who was that employee?

MR. KREIDMAN: It's either Mr. Marshay, Land or Mr. Norton.

THE COURT: One of those individuals in your position expressly said you have the hotel's permission to go in over the objections of the owner in room 612?

MR. KREIDMAN: As a matter of fact...

A113

ads

333

10

Colloquy

THE COURT: Although none of them accompanied the police officers to that suite?

MR. KREIDMAN: Security officer accompanied them.

THE COURT: Who accompanied them?

MR. KREIDMAN: A security officer was there.

THE COURT: I heard no such testimony as to that, Mr. Kreidman.

MR. KREIDMAN: We were not...

THE COURT: There were questions put to the witnesses as to who was there.

MR. KREIDMAN: There was a security officer there who arrived later.

THE COURT: Who arrived later?

MR. KREIDMAN: I don't know at what point he arrived but he did arrive.

THE COURT: There were a number of questions asked as to who was present and there was no testimony as to a security officer present when Donnelly and Powers went into that room.

MR. KREIDMAN: I don't know where he was. I believe he may have been outside. I don't know where he was. He was there.

I would ask The Court if to read, if it would,

ads

334

11

Colloquy

People v. Callman.

THE COURT: I suggest, Mr. Kreidman, before you ask me to read any cases you read them yourself.

MR. KREIDMAN: I have, sir.

THE COURT: Instead of reading just the three lines in McKinney's and I suggest you brief them in writing for me. I don't propose to read any cases you cite to me unless you have a brief.

MR. KREIDMAN: I'll get you the case right now.

THE COURT: You keep on throwing up these cases to me and when I look at them they're either not in point or superceded or they hold directly the opposite point you're relying on.

If you wish to present further evidence on this point, whether there is basis for the police to go into this room legally I'll be glad to hear it.

MR. KREIDMAN: I'd like to get one of my witnesses out of the way, if I may, a Florida police officer, get him out of the way, if I might.

THE COURT: What I suggest you do is -- how many other witnesses do you propose to call in connection with this hearing?

A115

ads

335

12

Colloquy

MR. KREIDMAN: With the hearing?

THE COURT: Yes.

MR. KREIDMAN: I don't know. I'd have to go to the hotel to see who is there and who is available. I had no idea this would come to this today.

THE COURT: When did you think it would come to, next week?

MR. KREIDMAN: I didn't know. I didn't even know the Court would grant the defendant's motion.

THE COURT: If you had read the cases you would learn that the law requires me to grant such a motion.

MR. KREIDMAN: When I saw the waiver section...

THE COURT: I saw no language that refers to waiver. I see language that gives The Court discretion in determining whether or not to allow the hearing to be held during trial.

MR. KREIDMAN: Well, if I...

THE COURT: If you find me some cases that says the defendant under these circumstances has waived his right to a hearing I'll be glad to see those cases but again I suggest that you do some legal research first.

MR. KREIDMAN: On page 289, right there in

the footnotes.

THE COURT: Right there in the footnotes?

MR. KREIDMAN: Yes, sir.

THE COURT: What case are you relying upon now?

MR. KREIDMAN: People v. McCall.

THE COURT: Have you read that case?

MR. KREIDMAN: No, sir, I have not.

THE COURT: I suggest you don't cite to me cases that you haven't read, Mr. Kreidman. I don't think that's a very healthy thing to do nor a very intelligent thing to do.

MR. KREIDMAN: With all due respect, sir, sometimes it's quite difficult to prepare a direct case, prepare cross examination, get cross examination readn and at the same time be prepared for legal argument and be an Appellate Bureau of the District Attorney's Office at one time.

THE COURT: Mr. Kreidman, I suggest if you're not fully prepared to do those things you ought to get into some other field of endeavor.

(Continued on following page.)

j.k.

Colloquy

MR. KREIDMAN: After this case, I may, sir.

THE COURT: That might be a wise decision on your part.

THE COURT: I suggest you round up any additional witnesses you wish to have as quickly as possible in connection with this motion to suppress.

I will give you a ten minute recess now to make whatever telephone calls you wish to make and then we will resume the trial of the case.

MR. KREIDMAN: I don't know whether I can get these people in ten minutes, sir. It would take me at least ten minutes to get upstairs to try to get the telephone numbers and making these calls.

THE COURT: What telephone numbers?

MR. KREIDMAN: The home numbers of some of these witnesses. These ~~people~~ people are not working at the hotel. It's a night crew at the ~~hotel~~ hotel. That's the problem.

THE COURT: I suggest you do it over the lunch hour in that ~~case~~ case, Mr. Kreidman.

MR. KREIDMAN: May I have a ten minute recess?

THE COURT: No, you may not have a ten minute recess in that case. We will proceed with the trial

K2

338

Colloquy

at this time.

Mr. Coiro, is it your intention to call any witnesses in connection with this proceeding?

MR. COIRO: No, your Honor.

THE COURT: Very well.

~~MEMBER~~ Bring the jury in, please.

I assume, Mr. Kreidman, you are prepared to go forward with the trial at this time.

MR. KREIDMAN: With one additional witness, yes.

THE COURT: That's your last witness?

MR. KREIDMAN: I have one more that is coming.

THE COURT: When is he coming?

MR. KREIDMAN: I don't know, sir. I don't know, sir.

THE COURT: Well, that's very informative.

MR. KREIDMAN: May I approach the bench for a moment with defense counsel?

THE COURT: Yes.

[Thereupon, Mr. Kreidman and Mr. Coiro approach ~~MM~~ the bench for a discussion held off the record, after which the following proceedings re: on the record, in open court:]

A119

Greene - People - Direct

numerous people, various police officers, sergeant on patrol was present and Inspector Flood.

Q Did you receive an assignment?

A Sergeant Ricker directed my partner, myself and Patrolman Powers to go to the sixth floor to check room 612 and 613.

Q When you got to 613, what happened?

A Upon arriving at room 613, my partner, Patrolman Donnelly, knocked on the door.

I could hear some type of a commotion inside. Nothing loud, but like mumbling. Finally, the occupant of the room, David Johnson, asked, "Who is it?"

"It's the police." Again, this is stated by my partner, "There has been trouble in the hotel. Could we check your room?"

The occupant of that room, Mr. Johnson, stated, "Yes."

Again let me state there was a pause between the initial ~~MM~~ communication between Johnson and my partner. Finally, the door was opened. My partner spoke with this David Johnson.

Q Did you later ascertain who this David Johnson was?

A 120

Greene - People - Direct

A Yes, I did.

Q Who was it?

A It was ascertained at the station house it was James Joseph Doyle.

Q Tell us about the rest of the communication between your partner and Doyle. ✓

A Once the door to room 613 was opened by Doyle or Johnson, which was the first knowledge I had of the person, my partner conversed with him.

He did state, "All right, search the premises -- not to search the premises, but to come in and check the security of the premises." 1

THE COURT: Where was Powers at that point?

THE WITNESS: During the time of conversation, again let me state it was after Johnson stated, "Come in, it's all right," Powers walked past my partner and went to the far end of the room.

[Continued on the next page.]

Take 6

346

lgl G reene-People-Direct

DIRECT EXAMINATION

BY MR. KREIDMAN: (Cont'g.)

Q And then what happened?

A I stayed by the hallway, and the door at all times was open to the hallway.

My partner then proceeded into the room. And after a while motioned to me and, at that time--

Q What sort of motion was it?

A A hand motion. This is after say -- after a minute or several seconds, motioned to me and the subject, Johnson, was placed against the wall.

Q Did you have a gun out at this time?

A After he was placed against the wall, my gun was out.

Q Okay. What happened then?

By the way, how was Johnson dressed when he answered the door?

A Johnson was dressed in his ~~underwear~~ underwear, skivvies, boxer shorts.

Q After you placed Johnson and Doyle up against the wall, what happened?

A My partner, Patrolman Donnelly, walked towards a closet and asked or stated, "Come on out."

After that statement was made, the person came out

A 122

~~Green-People-Direct~~

and that person is the defendant, Thomas LiPuma.

Q ~~And~~ And how was he dressed?

A He was dressed in dark slacks, light ~~and~~ colored shirt.

Q And then what happened?

A LiPuma was placed against the wall and again I had my gun drawn on both of them, and then a third party came out and again moved to that area where the other two subjects were. And that was Peter.

Q Who is that?

A Peter Ramondo.

Q And how was he dressed?

A ~~Shirt~~ Shirt and slacks.

Q Did any of them have any jackets on?

A No, they didn't.

Q And did you notice the closet, sir?

A After the three subjects were against the wall, yes, I did notice the closet.

Q Were any jackets in the closet?

A Yes, there was.

Q About how many?

A Several jackets, two, three jackets.

Q Now, while these people were coming out of the closet, where was Patrolman Powers?

A123

Greene-People-Direct

A Patrolman Powers is ~~km~~ at the far end of the room, that's the window side, and with his gun drawn facing towards the closet.

Q Now, what did Doyle say when the two men came out of the closet?

A Statement to the effect, like, "Who the hell are they? What are they doing here?"

Q Did you notice if there was any property in the room?

A There was property in the room.

Q And where was the ~~km~~ property?

A That property was on the twin bed to the far end of the room. The bed close to the windows.

Q How was it and describe it.

A That bed was fixed, the bedspread over it. On the bed was an American Tourister case with a leopard coat and another fur jacket or fur coat inside it.

Again, the case could not be closed. Apparently, the items were too bulky and the suitcase couldn't close.

MR. COIRO: I object to it, what the items apparently were.

THE COURT: Sustained.

BY MR. KREIDMAN:

Q Were the defendants searched?

Greene-People-Direct

A They were frisked.

Q Did anything else happen then?

A They were asked to empty their pockets.

Q I show you People's Exhibit 2 in evidence.

(Handing to the witness.)

Q Do you know where this came from, cufflinks?

A The cufflinks came from the pill box.

Q And where was the pill box?

A That pill box came from the person of Peter Raimondo.

Q Thank you.

I show you People's 3.

(Handing to the witness.)

Q Do you recognize this?

A That's the ship's pin that was in a black attache case.

Q And where did -- Where was this attache case?

A That attache case was on the bed where that suitcase that you have on your table right there was placed.

Q I show you People's 10 for ~~identified~~ identification.

(Handing to the witness.)

Q Do you know where those came from?

A Those are the keys that came from Peter Raimondo.

A/25

ads

363

** ****

A 126

7/7

Greene=People-Direct

THE COURT: Received.

(Received and marked People's exhibit 16,
in evidence.)

BY MR. KREIDMAN:

Q I show you People's exhibit 14, in evidence. ↓

(Exhibit handed to the witness.)

Q I ask you to mark thereon where the Tourister
luggage was with the fur coats in it?

THE COURT: Your testimony is that it's
underneath the bed?

THE WITNESS: That's correct, Your Honor.

THE COURT: You may mark it. ↑

(Witness complies.)

Q And could you also make a mark, indicate
with a "P" where Patrolman Powers was?

THE COURT: Where Powers was?

MR. KREIDMAN: Yes.

THE COURT: When?

MR. KREIDMAN: The time the people were
brought out of the closet.

THE COURT: What?

M MR. KREIDMAN: Where Powers was when the people
were brought out of the closet.

THE COURT: Officer Powers?

A 126

7/11

Greene-People-Cross

you mentioned?

A The three officers, myself, the Geibels and thereafter the sergeant, Sergeant Ricker.

Q Now, did you or your brother officers in your presence obtain a description from the Geibels as to the men that were in their apartment?

A A description related to me from another officer as three male whites, 30's and very Latin, two were Latin.

Q Two were Latin. Now, were you present -- did you hear the Geibels say this to the other officer?

A No, I did not.

Q You did not.

Now, you then said you conducted a search, right?

A That's correct.

Q And you searched what, the bottom ten floors of the apartment?

A Tenth floor down to the basement.

Q See people walking in the corridor?

A I'd say hotel people.

Q Did you see any patrons, people that were living at the hotel?

A I came across hotel employees.

Greene - Pape - Cross

BY MR. COIRO:

Q What happened next, officer Greene?

A We could hear -- I heard like mumbling.

Q You heard mumbling?

A Like a very low tone.

Q And you were standing behind Powers and Donnelly, right?

A Donnelly, Powers, I am to the side by the door. I'm not in front of the door.

Q Okay. And there comes a time the door is opened, right?

A That's correct.

Q What happens as soon as the door is opened?

A David Johnson came to the door. A conversation ensued between Patrolman Donnelly and David Johnson.

Mr. Johnson stated, "I was asleep. What do you guys want?"

Donnelly told him there has been trouble in the hotel on various floors. Would you mind if we come in and check the security of your room.

Q Check the security of your room?

A That's right.

Q Well, the door was locked, right, when you knocked on the door, when you and your brother

A128

Greene - People - Cross

officer knocked on it, right?

A Neither of us attempted to open the door. We would wait until we were asked in.

Q Didn't Powers rush right by ~~REDACTED~~ Donnelly and Doyle?

A After Johnson, who was Doyle, stated, "Yes, you can come in."

Q "Yes, you can come in"?

A That's right.

Q And it's your testimony that he said, "Yes, you can come in with a suitcase full of furs on the bed; is that right?

A I am telling you what Mr. Johnson stated.

Q That's what Mr. Johnson said?

A "May I come in?"

"Yes, you can come in."

Q And the first thing you saw when you came in was a suitcase full of furs, right?

A Let's stop on that.

Q Officer--

MR. KREIDMAN: Objection.

Q When you got in the room--

MR. KREIDMAN: Objection. Let the witness answer.

A129

Greene - People - Cross

THE COURT: I suggest the witness answer and not add anything else but just answer the questions put to him.

BY MR. COIRO:

Q When you got in the room, did you see the suitcase on the bed with the furs in it?

A When I was physically inside that room, I saw the suitcase with the furs.

Q With the furs in it?

A That's correct.

Q Doyle didn't go over and try to hide it, did he?

A No. He said, "I am a salesman," and that was his throw-off, I presume.

Q Now you are adding the words "I'm a salesman." You didn't add that when Mr. Kreidman asked you on direct, did you?

MR. KREIDMAN: Objection to argument.

THE COURT: Sustained.

BY MR. COIRO:

Q Did you testify on direct that Doyle said something about being a salesman?

A I did not. I wasn't asked.

Q Did you testify before the grand jury

that Doyle said he was a salesman?

A I would to M read the minutes. That's quite some time ago.

Q I show you the minutes.

[Handing to the witness.]

A On the minutes I did not state that. I was not asked.

Q You weren't asked a lot of things, were you?

A Maybe I wasn't.

Q But you volunteered them here today, didn't you?

MR. KREIDMAN: Objection.

THE COURT: Sustained.

BY MR. COIRO:

Q By the way, how long have you been in Florida?

A Since October '73.

Q When did you come back from Florida to testify in connection with this case?

A I have been back for two weeks.

Q Been back for two weeks?

A Yes.

Q Anybody let you read your statement since

Greene - Peple - Cross

that time?

A Just my memo book.

Q Just your memo book?

A Yes.

Q Now I ask you, you said you had gotten a description of male whites, two Latins; is that correct?

A That's correct, sir.

Q Did you enter in your memo book that when you got into the apartment these men fit the description?

A No.

Q As a matter of fact, Officer Greene, you went to that room 613 to search, didn't you?

A Went to 613 to ascertain who was there.

THE COURT: Keep your voice up, please, officer.

THE WITNESS: I said we went to 613 on the direction of the Sergeant Ricker to check that area out, that room out.

BY MR. COIRO:

Q Once the man answered the door and was in he his shorts and said ~~he~~ was okay, why did you insist on going in?

A/32

Greene - People - Cross

A The man invited the officer in. He said, "All right, you can come in."

Q "All right, you can come in," with first sitting there on the bed?

MR. KREIDMAN: Objection, Judge.

THE COURT: Sustained.

MR. KREIDMAN: Judge, may I ask that counsel refrain from argumentation with the witness.

MR. COIRO: I am not arguing.

THE COURT: If there is a specific objection to the question, Mr. Kreidman, the Court will rule on it.

MR. KREIDMAN: Objection as argumentative.

THE COURT: I have sustained your objection.

MR. KREIDMAN: I am sorry, sir, I didn't hear you.

BY MR. COIRO:

Q Whom did you arrest in connection with your activities on January 10th, 1972?

A David Johnson and James Joseph Doyle.

Q You arrested James Doyle, right?

A That's correct, sir.

Q And when you arrested him, you found out

A133

Colloquy

a little earlier this afternoon.

May I now suggest that you get whatever witnesses you can, start rounding them up, whatever witnesses you want in connection with this hearing.

MR. KREIDMAN: The hearing on the motion to suppress?

THE COURT: Yes.

We'll take a luncheon recess now. We'll recess until a quarter to two.

MR. KREIDMAN: Thank you, your Honor.

THE COURT: Mr. McGarity, excuse the jury for lunch now until a quarter to two.

(Whereupon, the jury was recessed for the luncheon hour.)

THE COURT: Mr. Kreidman, I assume in connection with ~~this~~ ^{this} ~~last~~/motion to suppress, you are conceding that the defendants did, in fact, make this motion?

MR. KREDIMAN: No, sir, not for one second.

THE COURT: They made the representation on this record that they made the motion. I haven't heard anything from you to the effect that no such motion was ever made, if you wish to show that no ~~such~~ such motion was ever made.

MR. KREIDMAN: No, sir, it's their burden, sir.

Colloquy

THE COURT: ~~MM~~ Mr. Coiro, as an officer of ^J this Court, has testified the motion was made, and his partner has testified as an officer of the Court the motion was made.

MR. KRIEDMAN: Sir, "I was in a hotel last week with Patrolman Greene checking out keys", and there is a bit of testimony as to when he made -- and as to whether or not he checked out the key and with Room 1710. "I don't remember that." Memories are subject to failure.

THE COURT: They~~made~~ made a representation to this Court, Mr. Kreidman. Now, I'm accepting their representation. ¹

MR. KREIDMAN: It's ver y simple for them, sir, to just order the minutes at that time. They made the representation it was on the minutes. Very simple to trace it down.

I would ask the Court to impose that burden upon the--

THE COURT: Not if you hav e some doubt as to whether the motion was made.

MR. KREIDMAN: I certainly do.

THE COURT: What is the basis for your doubt?

MR. KREIDMAN: ~~Human~~ Human memory, taking place

~~ask~~ that long ago.

THE COURT: Do you have memory no such motion was made?

MR. KRIDMAN I have never heard of any such motion being made ever.

THE COURT: Were you counsel at that time?

MR. KREIDMAN: I believe I was.

MR. QUAGLIATO: Absolutely not.

MR. KREIDMAN: T here is an example of ~~human~~ human memory.

THE COURT: Whose memory, his or your memory?

MR. KREIDMAN: X I don't know whose memory, sir.

THE COURT: I advise you, if you wish to contest that as to whether the motion was made, if you ~~ag~~ are going to take a position on it, I suggest ~~a~~ you discuss it with the Assistant District Attorney--

MR. KREIDMAN: No longer with the Office.

THE ~~RECENT~~ COURT: He's still practicing law. I see him frequently in this Court. If you're unaware of where he is--

MR. KREIDMAN: Wouldn't the best way to do it, the most logical--

THE COURT: Mr. Kreidman, please.--

MR. KREIDMAN: --To get the minutes?

THE COURT: I suggest you get the minutes. You wish to get the minutes.

MR. KREIDMAN: Yes, sir.

THE COURT: Quarter to two.

MR. KREIDMAN: May I have a date from counsel as to when he makes this allegation?

THE COURT: He's given you the date.

MR. KREIDMAN: I didn't take it down. I thought it would be imposed upon him the obligation of getting the minutes.

THE COURT: He made a representation, Mr. Kreidman, as an officer of the Court, as to what transpired. I'm not prepared to negate that representation in the absence of some statement by the District Attorney that his recollection differs now. You, apparently, have no recollection at all because you weren't there. It is for that reason I suggest you talk to the Assistant who was there and if you have some reason then to question it, we'll proceed from there.

But, at this point, you have no reason to question it at all, except you're questioning the integrity of counsel?

Colloquy

were called?

MR. KREIDMAN: Soemthing strange was going on.

THE COURT: What was strange going on?

MR. KREIDMAN: Clapping sounds and strange noises coming out of the room.

THE COURT: What sort of noises?

MR. KREIDMAN: I don't know, sir.

THE COURT: Don't you think that might be relevant?

MR. KREIDMAN: They heard the clapping sounds and asked the superintendent to open up the door and they did. The police found the man with a needle in his arm at the time and Judge Ringel, which was affirmed up ~~km~~ to the Court of Appeals, ruled that the police's common law right to investigate was concerned here in an emergency situation.

Officer Powers has stated an emergency situation

THE COURT: ~~Mr.~~ Mr. Kreidman, the mere fact that Officer Powers decides it's an emergency situation doesn't make it an emergency situation.

And I see absolutely nothing in the facts of this ~~a~~ case that made it an emergency situation for these men to enter a room on the sixth floor of that hotel, absolutely nothing.

Colloquy

MR. KREIDMAN: Officer Powers thought that there may be burglars in the hotel.

THE COURT: I'm not concerned with what Officer Powers thought.

He had no basis for drawing that conclusion. How a reasonable man could have drawn that conclusion, under the circumstances, is beyond me.

MR. KREIDMAN: He knew there were burglars trapped in a hotel room.

THE COURT: In Room 612 or Room 613?

MR. KREIDMAN: There were new occupants and he thought ~~new~~ burglars might be trapped in there.

THE COURT: Why?

MR. KREIDMAN: ~~Because~~ Because of the ~~new~~ noise.

THE COURT: First of all, Officer Powers said he didn't hear any noise.

MR. KREIDMAN: That's correct.

But he noticed the look on Mr. Doyle's face.

THE COURT: The look on his face?

MR. KREIDMAN: I think -- I think that's the testimony.

THE COURT: He said he was sleepy. The sole basis for thinking there was something suspicious

10/8

Colloquy

was consent.

THE COURT: To save you time, Mr. Kreidman, on this hearing, I ~~would~~ won't require you to call the hotel employees. I'll assume for the sake of this hearing that the hotel employees gave the police permission to go into any room they wanted to in the hotel.

MR. KREIDMAN: Fine, sir.

THE COURT: Do you have any other witnesses you propose to call on this hearing?

MR. KREIDMAN: That would be it.

THE COURT: Y'u have no other witnesses.

MR. KREIDMAN: That would be the testimony.

THE COURT: What will be the testimony?

MR. KREIDMAN: Just what you heard.

THE COURT: I say, do you have any other witnesses you intend to call?

MR. KREIDMAN: For the hearing, no, I do not.

THE COURT: Mr. Coiro, do you propose to call any witnesses in connection with this hearing?

MR. COIRO: I do not, Your Honor.

THE COURT: What about the question of whether Doyle gave consent or not to their going into the apartment? Do you wish to offer any proof on that

A/140

ads

417

A 141 :

10/9

Colloquy

issue, Mr. Coiro?

MR. COIRO: Would Your Honor bear with me for just one moment?

(Defense counsel confers with defendant.)

MR. COIRO: Judge, I'll stand on the record as it stands before Your Honor at this time, the entire record as to the testimony of not only Patrolman Greene, Donnelly and Powers; those were the three that went into the room.

THE COURT: Yes.

Well, I'll hear your final arguments in that case. While we're waiting for this lawyer we might as well dispose of this motion as long as we've heard all the testimony.

Do you have anything further, Mr. Kreidman?

MR. KREIDMAN: On the issue of consent I'd argue...

THE COURT: That it seems to me is the only issue you have open to you, Mr. Kreidman. I can find no legal basis for your argument that the hotel inn-keeper had any right in this case to give them permission to go into this room. I am also satisfied that he had standing to bring this motion and I assume that he brought this motion

A 141

McNally - Defendant - Cross/Redirect

Q And she said if she saw him after two years she probably wouldn't recognize him, probably not?

A Correct.

Q And you were advised, were you not, that if she saw him she might recognize him?

A By the husband, an opinion on his part again, sir.

Q Right.

MR. KREIDMAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. COIRO:

Q Mr. McNally, when you spoke to Mrs. Geibel and she said she identified a man in the line-up, did she say anything else about identifying anybody else?

A She said she picked out two others.

Q Now, when you were advised by Mr. Geibel that she probably could identify the man after two years, what did Mrs. Geibel say, if anything?

A Mrs. Geibel remained mute and shrugged her shoulders, in this fashion [indicating].

Q And what did you take the shrugging of the shoulders to mean?

A In view of--

MR. KREIDMAN: Objection.

THE COURT: Sustained.

A142

K13

469

McNally - Defendant - Redirect

BY MR. COIRO:

Q Now, she told you she saw the face of the man at the desk, right?

A Yes, sir.

Q And she say to you the man at the desk was the tall man or the short man?

MR. KREIDMAN: Judge, objection. There is a tall man and a short man and one comes out of the bedroom. Objection.

THE COURT: Rephrase your question, if you would, Mr. Coiro.

BY MR. COIRO:

What
Q / Did she say to you about the man at the desk?

A She knew for a fact that he was not the taller man.

MR. COIRO: I have no further questions.

MR. KREIDMAN: I have no further questions.

THE COURT: Step down, Mr. McNally.

THE WITNESS: Thank you.

[Witness excused.]

THE COURT: Any other witnesses, Mr. Coiro?

MR. COIRO: Judge, may I approach the bench with Mr. Kreidman?

A143

Colloquy

I will accept any recollections of counsel if they are concurred in by the district attorney or the court in which the alleged representations were made, but I am not going to accept as proof that you joined in the motion of Doyle solely on the recollections of counsel as to something that was said off the record before a judge.

That is the reason we have reporters who can put such matters on the record; and if you, in fact, did join in this application off the record, that is most unfortunate, if neither the judge nor the assistant district attorney has any recollection of your having done so.

Yes, Mr. Kreidman.

MR. KREIDMAN: Judge, I would like to state that it's been my understanding all along that there was no motion to suppress in this matter, and I was going ahead with this matter purely on an identification basis and not a motion to suppress, based upon my understanding, and I ~~MMHM~~ thought likewise, although we had not discussed it, that, number one, there was a legal search, or, number two, that the defendant had no standing. So I never even thought that ~~MMHM~~ there

1gl

Colloquy

THE COURT: Well, there obviously was some basis for that under standing, Mr. Kreidman, in view of the fact I specifically asked you and Mr. Coiro before we commenced this trial what motions were pending that had to be resolved and was it necessary to hold any hearings and I was advised unequivocally by Mr. Coiro that the only motions that were pending was a motion to suppress in-trial identification of the defendant and that a Wade hearing for that purpose was required but that was the only hearing that was required.

It seems to me, Mr. Coiro, that you have an obligation here to attempt to bring yourself within the provisions of Section 710.40 of the CPLR which sets forth when a motion to suppress may be made, and if you cannot do that, I'm not going to entertain your motion regardless of how meritorious it may be.

MR. COIRO: Judge Fraiman, I intend to check out the last four appearances or three appearances before Mr. Justice Roberts.

I'm going to see if I can locate the stenographer now and have her read that portion back to me.

Judge, unfortunately, and I have to stand

A 145

Colloquy

determination.

MR. COIRO: Judge Fraiman, I can't quarrel with what your Honor just stated.

Judge, what I'm saying is that if, in the course of making all of the appearances between my partner and myself, and, Judge, I think on a number of ~~a~~ occasions, and the file will reflect that I was actually engaged, that there was the possibility that this motion either was put on the record or it wasn't put on the record. Judge, we're still trying to determine that.

But ev en if ~~xxx~~ your Honor wishes to say that I was even derelict in my duty, Judge, I would stand before y~~our~~ Honor and have your Honor castigate me from one end of this courtroom to the other for being derelict.

But now that I'm ~~xxx~~ truly in the case and I see what it's all about, in the interests of justice dictates, Judge, that y~~ou~~ don't h old it against the client, Judge, take it out on me.

If your Honor -- And your Honor would be right in saying, "Well, Mr. Coiro, that's your job, that's what you'repaid ~~for~~ to do."

THE COURT: Mr. Coiro, as I'm sure you're

A146

4

Colloquy

sation wherein my partner joined in Mr. Hochheiser's motion took place before — together with Mr. Hochheiser, my partner, Assistant District Attorney, I think his name is, Thomas Andrews, and apparently from what I can gather now took place off the record before Mr. Justice Leff and I am so ready to have them testify before Your Honor under oath as to that conversation.

THE COURT: Does Mr. Justice Leff have any recollection of this?

MR. COIRO: Judge, I didn't even speak to Mr. Justice Leff. I know that Your Honor — all judges are busy with matters that appear before them, there are a lot of off the record discussions, the amount of discussions he has, judge, I would say it would be next to impossible to remember.

THE COURT: What about Mr. Andrews?

MR. COIRO: I spoke to Mr. Hochheiser about that. Mr. Hochheiser said he did communicate with Mr. Andrews and that Mr. Andrews had no independent recollection one way or the other, Your Honor.

THE COURT: Have Mr. Hochheiser and your partner agreed upon the date which this allegedly took place?

A147

Geibel - Defendant - Direct

THE COURT: Yes.

BY MR. COIRO:

Q Mrs. Geibel, that night, in the line-up, of all of the men, all the line-ups that you viewed, did you recognize any of those men in the line-up as police officers?

A Yes.

Q You did?

A Yes.

Q That had been to your apartment that evening of January 10th?

A Well, I had seen ~~MM~~ them in the hotel.

Q In the hotel that night?

A Yes.

MR. COIRO: I have no further questions,
Judge.

THE COURT: Cross-examination.

CROSS EXAMINATION

BY MR. KREIDMAN:

Q How many?

A Did I recognize?

Q Yes.

A Well, I don't know. Particularly one I recognized. I remember making a comment. I don't know whether it

A148

Geibel - Defendant - Direct

was more than one or not. I don't remember.

Q You recognized one, and you said you recognized him?

A Yes.

Q And that was at the line-up?

A I said there is a policeman I saw in the hotel.

Q And have you seen that police officer since?

A I ~~MMN~~ don't think so.

Q Now, Mrs. GEibel, do you remember testifying-- withdrawn.

Do you remember saying something -- withdrawn.

You heard that tape, did you not?

A It wasn't clear. Yes, I heard the tape.

Q Several people in the room when you heard that?

A There were three, four.

Q Who was in the room when the tape was played?

A My husband, you were in the room, Detective Greene and Detective Donnelly.

Q Right. And were we all straining to hear what was on that tape?

A Right, yes.

Q And did you make some comment as to how the tape was set up, whether there was anything

A149

11

Colloquy

THE COURT: I'm sure you never have deliberately done so, Mr. Quagliata, but the reason we have court reporters is to record what goes on in the courtroom and particularly where something as important as joining in a motion is concerned it seems to me very basic and elementary that the motion generally is made in writing and if for some strange reason it's not made in writing certainly it's made on the record.

Now, we have examined the transcripts of June 12 as you are aware.

MR. QUAGLIATA: That's correct.

THE COURT: And there was no such application made on the record on June 12 nor was any such application made on May 30 or May 16th according to the transcripts of what transpired in the courtroom on those dates. Those were the alternate dates you indicated you might have made this statement to The Court.

Now, if The Court before whom you made this application is unable to recall that you made such an application and if the District Attorney is also unable to recall that you made such application I will have no alternative but to conclude that no

A150

Colloquy

MR. QUAGLIATA: The Judge tells me through his court clerk that he has no recollection of the case whatsoever, but I am telling your Honor that I have a distinct recollection of what happened, and I think I stated it yesterday.

I joined in those motions in the presence of the assistant and in the presence of the judge, and I remember Mr. Hochhesier's response; and if it isn't on the record, I tell your Honor as an officer of the court that it was made. I made my position aware to the judge and also to the assistant district attorney. And if it isn't on the record, if we had tape recordings and if we had cameras, those cameras would indicate that I said exactly what I am telling this Court that I said.

THE COURT: Well, unfortunately, Mr. Quagliata, the Court is bound by the official transcript.

MR. QUAGLIATA: I don't believe that's true, sir.

THE COURT: What transpired in the absence of exceptional circumstances or where both sides concurred as to what transpired or something trans-

Colloquy

pired before the judge and the judge has an independent recollection of it, but in the absence of any independent recollection by the court, by the assistant district attorney, in the absence of any written application to join in this motion, and in the absence of anything on the official transcript in this case of any motion that was ever made orally or in writing to join in this application to suppress, the Court finds that no motion was made prior to trial in this case to suppress, and that the facts which could have formed the basis for such a motion were readily available to the defendant prior to trial, and no other factors have been called to the attention of this Court which would warrant the Court's entertaining now such a motion during the trial, and for those reasons the Court will decline to entertain the motion to suppress by this defendant.

MR. COIRO: Now, if your Honor pleases, in light of your Honor's decision denying that motion --

THE COURT: I am not denying the motion, Mr. Coiro. I am declining to entertain the

A152

Colloquy

pending was a Wade hearing.

MR. COIRO: Yes, your Honor.

THE COURT: No other motions pending.

MR. COIRO: Yes, sir.

THE COURT: And pursuant to that statement by you the Court did, in fact, conducted a Wade hearing.

MR. COIRO: Correct, your Honor.

Now, in the light of your Honor's declining to entertain the motion, Judge, and I say this as a member of almost twenty-one years of standing before the bar, and I state to your Honor in light of that ruling your Honor has, in effect, said that I did not perform my legal functions properly, that in that respect I was derelict and I was incompetent.

And I, Judge, in light of that ruling, have to agree with you. I should have brought that motion on behalf of this defendant.

Maybe because of the present status of the court situation today and the moving of cases for trial and I was actually engaged and I delegated that authority to an associate of mine, who I have the utmost faith in, and I still say,

Colloquy

Judge, he said he jointed in that motion. I know he did.

I have been preacting a lot longer than him, and I take the responsibility for what he did. But, Judge, this is a serious constitutional right that I have waived, I have knowingly waived on behalf of my client, because I was derelict in the performance of my duty, and I do not feel that he should suffer, and your Honor may well rule that the search here was legal and it was consented to by Mr. Doyle, but, Judge, I can't take the chance.

This man faces a lot of years, Judge, if he is convicted here. And based on a right that he ~~MM~~ has, I waived it, and, Judge, if I have to go before the Appellate Division and they have to say to me, "Mr. Coiro, you were derelict," well, then, Judge, I will have to take my punishment like any other man.

I said to your Honor there was no motion to suppress here. I don't deny anything I have said here on the record. But, Judge, I can't see this man suffer because of my incompetency, and that's what it amounts to. And I don't blame Mr.

A153.1

Colloquy

Quagliata. I blame myself, Judge. And it's for that reason -- and, Judge, ~~another~~ another thing that I must state to your Honor. I don't see where the People can be prejudiced by holding this motion to suppress at the trial, for your Honor to entertain it now.

The entire testimony is in. They don't have to recall one witness. Everything is here before your Honor. All your Honor has to do is say, "I treated it as a motion to suppress."

I beg your Honor, I implore your Honor. I made a mistake. Don't let Thomas LiPuma suffer for it, because, Judge, that's what it amounts to.

I stand in his shoes. And if I stand in his shoes, as a defense attorney, then I should take the punishment as well.

Just, most respectfully, Judge, I know your Honor is a fair Judge and rules according to the law; but in the light of what transpired and in the ~~right~~ right that I waived for him, I most respectfully ask your Honor to declare a mistrial. I think it's too important to this defendant, and I know, Judge, you ~~will~~ put a lot of time

A153.2

Colloquy

and effort in and Mr. Kreidman and everybody else.

THE COURT: I decline to declare a mistrial in this case, Mr. Coiro. I have ~~not~~ in any way characterized your performance in this trial. The characterization you have just placed on your performance is one made by yourself, not by this Court. I have not in any way commented, ~~and~~ I don't believe, upon your performance in this trial, and I don't intend to.

MR. COIRO: Judge, if I might, your Honor, it's not maybe my performance at this trial, but, Judge, it's basic. I think a law school student would have made the motion, because maybe I was tied up in another trial and ~~was~~ what-not, maybe I didn't pay as much attention to that file as I should have paid to it, and I can't see him suffer because ~~of~~ my mistake, Judge. And it's mine because Mr. Quagliata does things at my direction.

THE COURT: I must say, Mr. Coiro, that it may be that the failure to make the motion is not quite as significant as it would appear to you, in any event. I have not ruled. I have

Colloquy

ruled upon the motion. That is, I have ruled that I would not entertain this motion, but I have not ruled upon any motions that you might have made at the conclusion of the People's case. You recall you ~~MEMBER~~ delayed those motions.

MR. COIRO: Correct, Judge.

~~THE~~ THE COURT: And I have very grave doubts whether the People would have proved a prima facie case with respect to counts 4, 5, and 6 of the indictment which encompass virtually all of the items that were seized in the room in question. And in the event the Court should conclude that the People have ~~FAILED~~ failed to make out a prima facie case in counts 4, 5, and 6, that would, it seems to me, virtually render academic this whole question of the timeliness of your motion to suppress. And which reminds me, that ~~MM~~ I think while we have this delay in this trial that this might be the appropriate time to entertain your motions which should have been made at the conclusion of the People's case, but which I indicated at the conference at the bench I would permit you to make nunc pro tunc at the appropriate time.

A153.4

SUPREME COURT : COUNTY OF NEW YORK

TRIAL TERM : PART 40

----- x
THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THOMAS LI PHU :

: IND. #600/72

:
Defendant. :
----- x

Original Courts Building
175 Centre Street
New York, New York
June 24, 1974

B E F O R E :

THE HONORABLE ARTHUR G. FREEMAN,

Justice.

A P P E A R A N C E :

For the People

HON. RICHARD LUI, ESQ.
District Attorney, New York County
BY: MORRIS KAPLAN, ESQ.
Assistant District Attorney

For the Defendant

NANCY ROSNER, ESQ.

RAYMOND P. STALKEE
Official Court Reporter

BEST COPY AVAILABLE

• A154

Colloquy

A 155

CLERK OF THE COURT: Thomas Li Puma, Federal custody.

MISS ROSNER: Rosner, Fisher and Scribner on behalf of the defendant Li Puma.

THE COURT: I adjourned this case twice, you were inconvenienced or other wise engaged?

MISS ROSNER: That is correct.

THE COURT: I would appreciate it if you would appear in this Court on time when the matter is on the calendar. I don't appreciate counsel coming in to my Court late. This matter was on the calendar for 10:00 O'Clock and I expected to dispose of it then, not in the middle of this trial.

MISS ROSNER: I'm very sorry.

THE COURT: You haven't appeared before me before, but in the future when you do, I expect you to be on time.

MISS ROSNER: Tardiness is one of my lesser attributes I'm afraid.

CLERK OF THE COURT: Thomas Li Puma, is that your name?

THE DEFENDANT: Yes.

CLERK OF THE COURT: Nancy Rosner, the lady

A155

at your side is your attorney?

THE DEFENDANT: Yes.

CLERK OF THE COURT: You have an application?

MISS ROSNER: Your Honor, I have on file, papers before the Court, an application to set aside the verdict in this case. I have not received from Mr. Crydam (phonetic), where is Mr. Crydam--

MR. KREIDMAN: I'm here.

MISS ROSNER: Any responding papers and I assume he doesn't intend to submit any. I would ask to be heard on our motion then?

THE COURT: Yes, I will hear you Miss Rosner.

MISS ROSNER: As Your Honor may recollect having been the trial court in this case, Mr. Li Puma was represented at trial by a different attorney. There was some controversy that arose during the course of the proceedings as to whether a motion to suppress evidence had been made prior to trial and if not what the course of it was and whether Mr. Li Puma's previous attorney made certain statements on the record to the effect that the failure to make the motion was wholly attributable to his own negligence

and incompetence, to quote that attorney and as a result, because of an apparent conflict of interest, Mr. Li Puma sought other counsel to make this motion.

THE COURT: The statement by counsel to the effect, the failure to make the motion was a result of dereliction of duty and was not made until after the Court had refused to consider this motion, you didn't make that point during the argument.

MISS ROSNER: I'm sorry, Judge. While the time sequence may be correct, I think the attorney labored under the misapprehension that such a motion had been made, some one connected with him or associated with his office of course upon learning such a motion had never been made, the attorney came and respectfully submitted that it was a serious dereliction of his duty and prejudiced his client not to have made the motion.

THE COURT: There is one point Miss Rosner of some significance. It seems to me that at the commencement of this trial, the Court asked defense counsel on the record whether there was any outstanding motion he required and the Court

was advised by counsel that there were not.

MISS ROSNER: Your Honor that is exactly our point. It seems to me--

THE COURT: Now that is not consistent with the statement that you have just made, that the District Attorney--defense counsel was under the impression he had made the motion.

MISS ROSNER: I make no defense for the conduct of counsel. Our point is as follows;

We claim that it was the ineffective assistance of counsel for trial counsel not to have made the objection or the obvious motion to suppress evidence which should have been made in this case. Whether it was because the attorney labored under the misapprehension the motion had been made or whatever reason he may have made, it simply remains and it is the inescapable conclusion that the defendant went to trial not having made the proper motions by his counsel, the most fundamental and obvious type of motion and practically the only viable line of defense which could have been made in a case such as this and I think the cases are clear, all that the only case in the Court of Appeals in New York

which is the Bennett Case, relying on the ineffective assistance of defense counsel, the rationale of that case is abundantly clear where counsel fails to make or fails to pursue the obvious lines of legal defense. If the defense was directed at the suppression of evidence and where the result of the failure to make such a motion is a verdict of guilty or the failure to suppress certain evidence which a defendant has a constitutional right to have suppressed, it is clearly ineffective assistance of counsel. We do not have here, Your Honor, a situation where the motion to suppress was clearly frivolous, that a defense lawyer could in good conscience have said this motion need not be made because simply at the suggestion that it would take up unnecessary time, this motion whose merit could have been obvious to the preparation of the trial, counsel--

THE COURT: Miss Rosner, let me ask you this.

The Statute specifically states when such motions may be made.

MISS ROSNER: It should be made before trial unless factors arise during the trial which cause

it to be properly made then and making it unable its failure to make it before trial.

THE COURT: No such factors were present in this case and the Court further found the motion was not timely made between the period provided for in the CPL.

Now, are you suggesting to the Court that when ever counsel fails to comply with the time limitations provided for in the CPL, a new trial must be granted because counsel was incompetent and didn't provide adequate defense? If that is the case setting forth for any time factors in the CPL, if they don't have to comply, if defense counsel then seems to have a choice, if complies with them, within the time limitation or if he doesn't comply with them within the time limitation, he is incompetent and then because he was incompetent and he didn't comply with the time limitation in the case, therefore he is entitled to have his hearing anyway?

MISS ROSNER: Not at all, Your Honor. Under the circumstances of this case, we submit that the following has be shown. A motion of obvious merit which probably would have resulted in the

termination of the entire prosecution as against this defendant should have been made before trial. There was no strategic advantage and the defendant sought none and did not knowingly consent to his attorney failing to make the type of application very likely that would have resulted in the dismissal of the charges against himself. This was not done.

THE COURT: I don't see any basis for that conclusion.

MISS ROSNER: We so allege, Your Honor, we allege that Mr. Li Puma did not know and in fact was affirmatively misled concerning the preparation for trial which has been made--

THE COURT: I was not addressing myself to you. The People certainly still have a case even if the motion had been granted. Actually, the testimony of the eye witness that the defendant was found in her apartment--

MISS ROSNER: May I address myself to that?

THE COURT: That would have been sufficient to submit the matter to the jury on the counts that were submitted in any event.

MISS ROSNER: I most respectfully disagree

A161

with Your Honor. Your Honor had pre-trial motions to suppress made. The following rationale is, first of all, there has been testimony in this case three Police Officers having entered the hotel room which Mr. Li Puma was found in, that testimony was a result of an unlawful entry into the room. There was no entry by reason of a Search Warrant or no probable cause to arrest anyone in the room. The entry, it's without any Fifth Amendment sanction or rationale, the Officers having found the defendant in that room would have itself have been suppressable. Secondly, the arrest of Mr. Li Puma was without probable cause. During the period of his unlawful detention, a line up was held in which he was identified by Miss Gibel. I submit most respectfully, Your Honor, that under the rationale of the Supreme Court in the District of Mississippi, the testimony of an eye witness to having identified the defendant is fruits of the poisonous tree for the following reasons. In this case this man was arrested without probable cause. During the period of his detention an identification procedure was conducted

A162

He was fingerprinted later at his trial, although there was no other evidence to support his conviction, fingerprint evidence was taken during the period of his unlawful imprisonment and was admitted against him. The Supreme Court of the United States reversed that conviction for the reason that the identification procedure taken during the period of unlawful detention was held to be the fruits of the poisonous tree. Likewise, had counsel acted competently in the course of the preparation of this trial, a motion would have been made not only to the rationale of a Wade Hearing, Gilbert and Stovall (phonetic) Davis versus Mississippi which followed in the Second Circuit, Edmonds against the U.S. and the very eye witness identification which is the sole reason for Mr. Li Puma's conviction would have been suppressed and for that reason, Your Honor, we urge alternatively that either Mr. Correa's performance fell so far below competent counsel's obligation to make all the appropriate motions on the constitutional privileges or the fact arose during the course of the trial which warranted

the holding of a motion to suppress at that time on either of those, Your Honor, and seems to be both are correct, the verdict in this case must be set aside. It is clear that even with the dismissal of counts two three four and six of this indictment, testimony still remained and was submitted to the jury.

Assuming for the moment that the limiting instructions could have been heeded by the jury and putting aside for a moment that probably you still have testimony which was fruit of the poisonous tree and possibly three Officers testimony finding Mr. Li Puma in the room and Gibel's testimony of identification of a line up held during the period of unlawful detention, under all the circumstances, the motion of suppression of course should have been made before trial. We allege as a matter of fact and offer to prove that Mr. Li Puma operated under an affirmative misapprehension of the fact that his attorney protected his rights and made all the appropriate motions when the attorney had neither done so nor made any inquiry to determine whether any other motions on his behalf had been

A164

made and his failure to so make the appropriate motions and it is the ineffective assistance of counsel and the net result being that a trial was held which resulted in the verdict of guilty which I respectfully submit never would have happened if counsel acted appropriately. There can be no suggestion that contradicts, any sound rationale of defense counsel advised him or cautioned him or any way caused the attorney to act as he did. He was sheerly negligent and there was no other words to apply to it, the ineffective assistance of counsel and the defendant has suffered and the Constitution says that cannot be the case, he is entitled to a lawyer who knows at least the rudiments of the Constitutional Law and motions to suppress. We submit, respectfully submit, that the record does not support a showing, he was giving the ineffective assistance of counsel. Furthermore, Your Honor, if we may go to the second branch of our argument, having preceded to trial with a very--completely impermissible evidence, evidence which was the fruits of the poisonous tree, we respectfully submit that under the rationale,

A165

Bruton Case, it was impossible for the jury to consider the evidence under counts one and two amounting to more than a five dollar pill box and ignore testimony concerning great valuables, furs, jewelry, rings, cuff links and a variety of other things which ultimately this Court held had no connection to Li Puma and could never under sound reasoning of law be admitted against him and I respectfully submit to think the jury could fairly consider counts one and two after having heard the incredible amount of testimony which Mr. Kreidman characterized as over whelming evidence concerning other unrelated inadmissible evidence and on either ground, Your Honor, I respectfully submit the verdict in this case should be set aside and the defendant's pre-trial status be given back to him and he should be allowed to make that motion to suppress which has been his right from the very beginning.

THE COURT: I will hear the District Attorney on this aspect.

MR. KREIDMAN: On which?

THE COURT: Both, both aspects, please,

could you have--

MR. KREIDMAN: Relative to the fact that the defendant waived his motion to suppress, I believe that it only became apparent to Mr. Corroes that there was a possibility of a motion during a trial and as a matter of fact, Mr. Corroes, myself and Mr. Hocheisser who is the attorney for the defendant Doyle, both, all of us believe that a motion to suppress would not be, it would be an inappropriate motion. We believed it would not--because of the fact that there was either consenting or accession circumstances or probable cause for the Police to enter that apartment. Under any of these grounds, it was our understanding that this motion would have not laid. It was only during the course of the trial that defense counsel felt after listening to some of the testimony that a possible motion to suppress evidence would be appropriate. We were all under the impression, Your Honor, that no motion would have laid and therefore we went directly to the identification and then into trial.

Counsel affirmatively waived the motion to suppress because of sound legal reasoning. It

A167

is my opinion, it was only when the Court comments indicated to him in some way a motion might have had a scintilla of strength he thereafter made his motion or motions to suppress. The defendant affirmatively waived his motion to suppress, he stated before Judge Roberts that there was only the identification hearing. He stated before Your Honor there was only the identification hearing. If the section of the CPL is to have any validity and in fact has been held constitutional motions that motions are waived, constitutional rights are waived, affirmatively brought in due time, then this is the classic case for such a waiver. Now, as to counsel's second point that the defendant could not receive a fair trial because of the fact that the Robinson burglary was presented before the jury and it was dismissed, if the Court please, it was the People's position and we argue most strongly and with due difference to the Court, the Court's decision in that matter was improper and that was wrong, not really positive and proper legally. The defendant should have been charged with burglary as far as the Robinson burglary

A168

was concerned and that count should have been submitted to the jury and we still maintain that position. However, Your Honor, it is not an unusual situation wherein multiple crimes are submitted to a jury and then during the course of the trial some of those counts are taken away from the jury. It's been held valid, there was sufficient evidence to indict them and there was sufficient evidence to get the case to the jury. The Court decided and the Court even of itself on the record, it was a close question of believability, you believed them and so it was decided in favor of the People. Unfortunately, the Court decided the motion in favor of the defendant, but certainly in a point there, wherein the Court stated it was a close question, that the motion at this time would be inappropriate to over turn the verdict.

MISS ROSNER: May I respond briefly?

THE COURT: Yes.

MISS ROSNER: The reason for the requirement in the Law that motions be made to suppress before trial is of course to prevent or to preserve the People's right to have an appeal

A169

without the barrier of jeopardizing the motion which makes, restores that right to the People. We are asking that the verdict be set aside and the defendant restored to a pre-trial status so that a motion to suppress could be made and granted. The People have every right lawfully to appeal whatever determination the Court lays in the defendant's favor. We are not asking for the Court to entertain this motion as part of the trial procedure so that jeopardy would bar an appeal. We're asking to be restored to pre-trial status. Mr. Kriedman asserts I assume of his personal knowledge that Corroea made some remarks, pre-trial about not seeing the merits in this motion. Excepting that for the moment as the People's allegation, it seems to me most respectfully beyond any doubt that absolutely and clearly shows that the defendant did not have the effective assistance of counsel. The Court quite appropriately, in order during the course of the trial that any basis for sustaining the suppression or entry of that room was lacking, no Warrant. Absolutely no reason to believe any one would was in the room and connected with

A170

any crime, no exigence circumstances, no real testimony of any consent.

Two of the Officers testified they brushed by the defendant and entered the room and brushed by the other occupant.

THE COURT: Miss Rosner?

MISS ROSNER: Yes.

THE COURT: On this motion, I did indicate that it was possible that the motion might have some merit, but I in no way, I wouldn't grant these motions.

MISS ROSNER: Exactly--

THE COURT: The motion was one that would have been granted--

MISS ROSNER: I'm not attempting to say that, Your Honor. Your Honor remarked on the record to foreclose any result to the suppression of the evidence. What I'm saying is reasonable cause, as Your Honor certainly is looking at the evidence would have been moved to at least to make the motion. So, that at the suggestion and advice of Mr. Kreidman the pre-trial attorney for the defendant decided it was not wise to make it. Abundant proof, if such did indeed take place,

that this attorney lacked the minimum standard of competency to be defending a man whose liberty is at stake. There's no sound reason, no reason bottomed in the case law, no reason at all not to have made this motion. Mr. Kleidman relies on the waiver by the defendant. I have stated on the record and I reaffirm it, we allege, as a matter of fact Mr. Li Puma operated under the misapprehension of the fact from communications with the attorney, that every motion to protect his rights had been made, including a motion to suppress. A knowing waiver under Johnson of the Supreme Court, it must intentionally made by the defendant. He must know what he stands to lose, what he stands to gain and to choose to abandon his right. That was never so.

THE COURT: You are not suggesting that when ever a defendant in a trial doesn't make a motion that may have been a valuable motion in his behalf, that he must waive it on the record to make that motion?

MISS ROSNER: No, Your Honor. I am saying we are prepared to prove the following.

We are prepared to prove that Mr. Li Puma

A172

relied on communications from his counsel.

THE COURT: I assume that counsel advised him that he didn't think there was any merit to the motion or some thing to that effect?

MISS ROSNER: More than that, Your Honor,

Mr. Corroes, Your Honor stated that every plausible motion to suppress had been made. This man never abandoned his right to suppress evidence. He made nothing, no statements in the record. There is no statement by Mr. Li Puma that he did waive his right. So, Mr. Corroes failure to make the motion, the long and short of it was absolutely incompetent. This was the strategic reasoning. Nothing of benefit to the defendant, no strategy, no sensible, no plausible reasoning that he couldn't, after having failed to recognize the merits of the motion, the necessity of the motion became obvious when the evidence came in and Mr. Corroes, before trial should have made this appropriate motion to discover the People's evidence and make the motion to suppress before trial.

In any event, Your Honor, having proceeded to trial, they submit all the evidence, it was improper

A173

Colloquy

to submit to the jury to fairly consider the two counts that were submitted. I am prepared to go to trial expeditiously and I ask that the defendant be returned to his pre-trial status and be entitled to make the motion again which prior counsel did not make for him. The People are in no way prejudiced.

THE COURT: What you are asking for is a new trial?

MISS ROSNER: Correct, Your Honor.

The People have a right to appeal if any such motions restored to them and it seems to that in the--

THE COURT: The People are prejudiced. After the defendant has gone to trial you now come in and ask to have that conviction set aside and the defendant have a new trial and you say the People aren't prejudiced?

MISS ROSNER: I don't bring this motion on light grounds. I think we make it on very--

THE COURT: I'm sure the grounds are not light, but you are lightly brushing off a very significant fact. The defendant has been convicted by a jury on competent evidence. You don't think

A174

the District Attorney can reasonably persuade another jury to convict him, I'm sure that can happen.

MISS ROSNER: We're not seeking any delay. I'm prepared to go to trial as soon as possible and the possibility is so great in this case, in fact it's just not possible, I think it occurred, that Mr. Li Puma has been denied the effective representation by his counsel. It seems to me that all legal rights to appeal any motion to suppress would remain and be available to them, that in the interest of justice, Your Honor, this man should be returned to his pre-trial condition. He has now been incarcerated as a result of this verdict and stands a very great possibility of being not only sentenced for the acts charged in this case, but as a result of a parole violation as well.

THE COURT: I am aware of that. He also has a right to appeal the judgement of conviction and also from the Court rulings denying him the right to have this Hearing.

MISS ROSNER: During all of which time undoubtedly he remains incarcerated.

A175

THE COURT: Yes, undoubtedly.

MISS ROSNER: I think when it is apparent as we submit it is here, that the motion should have been made and had merit and when it is apparent that a tremendous quantity of unrelated evidence went to jury, I undoubtedly think affected their verdict under all the circumstances Your Honor, this is exactly the kind of situation that motions for a new trial or to set aside a verdict were made. We have such motions exactly to cover this situation like this. An appeal is not the only remedy provided this Court as tryer of the facts, has the right to grant the motion in the interest of justice and we submit that this is precisely the case intended by motions for a new trial.

THE COURT: Do you wish to be heard on the issue?

MISS ROSNER: On the summation of Mr. Kreidman?

THE COURT: Yes?

MISS ROSENBERG: We have set forth in motion papers various examples of Mr. Kreidman's remarks in summation. I don't think there is any question

that his remarks were entirely improper and at a few times during the course of the summation was chastised severely by the Court. The entire tenure of the summation was to denigrate the defense counsel, to label the defendant a criminal. He characterized the line of defense as a ploy and gave to the jury that he knows as the evidence grew, so did the defendant's guilt and if not, whatever evidence would have come in, there would have been a defense to meet it. His remarks injected his personal belief as to the credibility of the evidence and as to the guilt of the defendants. In my view Mr. Kreidman was entirely improper as a Officer of the Court and it was very prejudicial to the interest of the defendant. It is a separate and distinct matter. I think it is completely apart of the other grounds of the argument. A new trial would be required in the interests of justice, because it was prejudicial, because the Assistant District Attorney's summation was uncalled for and it is fully set forth in our papers and simply Judge, I find them simply shocking. If this Mr. Kreidman, both his Office and him

has to secure the conviction of Mr. Li Puma that way, it is just sad.

THE COURT: Mr. Kreidman, do you wish to be heard?

MR. KREIDMAN: Yes.

Your Honor, each and every comment that was made during the trial was positive upon the evidence. At no time did I denigrate Mr. Li Puma, or Mr. Corroes. As a matter of fact, I think I complimented him on presenting a very good case based upon the evidence in the case. My comment relative to the defendant in equating the defendant as to being a criminal was because it was on the evidence in the case and based upon the evidence and upon the defendant's own witness, Mr. McNally who testified Miss Gibel remarked the defendant as a criminal. It was based on the evidence and the defendant's own witness. Each and every comment was positive upon the evidence.

MISS ROSNER: May I respond briefly? Perhaps Mr. Kreidman even at this late date doesn't sense the impropriety of his conduct. He indicated that he complimented Mr. Corroes

Colloquy

on his presentation. He did that in the context of a remark when he said that Mr. Corroes case was an impossible one, thereby interjecting his own view concerning the credibility of the evidence and the merits of the case. In case Mr. Kreidman still doesn't know the entire proper fundamentals of a District Attorney or an Officer of the Court, he commented that his own summation, he believed was irrelevant and unnecessary in view of the overwhelming evidence against the defendant. That is entirely improper injecting his own comments time and again involving other types of cases. Well, if an eye witness said something, they would have said it was a police frame up, the police planted the goods on him, there wasn't even a suggestion that was again the incident. It was entirely improper by picturing the defense in the eyes of the jury as nothing but a ploy, nothing but a tactic used time and again by defense counsel. Mr. Kreidman's summation from beginning to end was beneath the state of any Officer of a Court.

THE COURT: The motion of the defendant to set aside the verdict in this case for a new trial is on three grounds based basically,

A179.

Colloquy

First ground is that the defendant was not represented by competent counsel, such counsel failed to make a motion to suppress such in evidence which was received during the course of the trial in which counsel says was highly prejudicial. The Court sees no merit to that ground for the motion. The Court observed Mr. Corroes, defense counsel, he was in fact an equedate and perfectly competent attorney who represented the defendant to the best of his ability. It is true that the defense counsel did not make a timely motion to suppress the evidence in question, but the Court does not feel for that reason it should find counsel incompetent and thereby grant the defendant a new trial or a Hearing on the motion to suppress. At this time and to do so would be to render meaningless the time limitations fixed in the Criminal Procedure at Law for when such motions have to be made. The defendant could either comply with these time limitations or if he fails to comply with the time limitations, he could then seek to have the judgement of conviction against him set aside on the grounds that counsel was not competent

A180

Colloquy

because he didn't make the motion on time. That indicates, that seems to me that it would render the time limitations in the Criminal Procedure at Law as meaningless.

For that reason, I see no basis to conclude merely by reason of defense counsel to timely move to suppress the evidence that he was incompetent and for that reason the defendant should be afforded a new trial and I will deny the motion on those grounds.

MISS ROSNER: May I add one aspect with respect to that branch of the argument?

We offer to prove, Your Honor, not just that Mr. Corroes didn't make the motion on time, he misled his client concerning what he had done in the preparation of his defense and I would ask for a Hearing to establish, as a matter of fact, Mr. Carroes lied to his counsel concerning what motions had been made and there can be no waiver here of this right and it seems to me when an attorney lies to his client that is ineffective assistance of counsel.

THE COURT: Miss Rosner, my decision on this motion is based upon the papers that you

A181

have submitted--

MISS ROSNER: Can I ask to submit a further affidavit?

THE COURT: Application denied.

As to the second branch of the argument, for a new trial on the prejudicial evidence that was admitted in connection with the third, fourth, fifth, six counts of this Indictment which thereafter would dismiss, the Court finds that the District Attorney offered the evidence in connection with the third, fourth, fifth and six counts in good faith. I think the decision was that evidence ultimately there was insufficient evidence to support a conviction against this defendant on those counts, it was a close one. Under those circumstances, that the fact the Court granted the motion to dismiss both counts does not require a new trial.

The Court when it sustained that, that is granted the motion to dismiss those counts, the Court instructed the jury that they were not to in any way to consider the evidence that had been received in connection with those counts against the defendant and I am satisfied that the Court's

instructions were sufficiently clear and sufficiently persuasive that the jury did in fact follow the Court's instructions. I see no basis for the foregoing reason to grant a new trial on that ground.

Turning now to the third and final grounds of the defendant's motion, is it for a new trial based upon improper statements by the District Attorney. While the summation of the District Attorney is not one I would describe as a model of the way in which a Prosecutor should sum up in a criminal case. Wherever defense counsel objected to the remarks of the District Attorney, the Court made the appropriate comments to the jury either correcting what the District Attorney had said or causing them to ignore what the District Attorney had said. In other instances no objection was taken to the summation by the defense counsel. While as I indicated I don't think the District Attorney's summation was a model of propriety nor do I think that it was so outrageous as to warrant a new trial, particularly in the view of the instructions given to the jury when ever an objection was

Colloquy

taken to in any aspect of that summation by defense counsel.

Accordingly also I deny that ground of the defendant's motion.

MISS ROSNER: May I make clear our theory, Your Honor, in two respects?

First of all, we contend wholly that is irrelevant whether offer of evidence in this case was made in good faith or not, simply the question is whether he could be fairly tried on the remaining two counts. We cite Bruton--

THE COURT: I don't think Bruton supports your position, Miss Rosner. The issue is undeniably a question of good faith. It seems to me merely because the Court grants a motion to dismiss certain counts of the Indictment that that does not require the granting of a new trial. As to the other counts of the Indictment, because evidence was introduced with respect to the dismissed ones which would not be admissible with respect to the count that survived, I say the question was a close one. The District Attorney acted so far as I know in good faith including those counts in the Indictment.

A184

It seems to me that those factors are the test plus the fact that I think the limiting instructions here were sufficient remedy for coping with the evidence that was introduced.

MISS ROSNER: Finally, Your Honor, I wish to make it clear where ever Mr. Corroas did not object to an inappropriate or improper comment, we likewise allege that it was incompetent on his part not to have done so.

It seems to me they were so obvious and improper and should have been objected to.

THE COURT: I understand, Miss Rosner, that is your position.

MISS ROSNER: Your Honor, apart from those grounds, we have no other grounds to support our motions for a new trial. I would ask to see the pre-sentence report, for an opportunity to see Mr. Li Puma's pre-sentence report?

THE COURT: I have no objection basically, Miss Rosner, to showing you the pre-sentence report. I would prefer you not show it to the defendant.

MISS ROSNER: I can accept that limitation. I would like it for my own information on preparing

11/3 Donnelly-People-Recess

A I can guess.

Q So you don't take his word for it?

A Most of the time they do give us the proper height.

Q Most of the time you do?

A Yes, sir.

Q But it's important to say that he's not the tallest man, isn't it?

MR. KREIDMAN: Objection.

THE COURT: Objection is sustained.

MR. COIRO: I have no further questions.

THE COURT: You may step down, Detective Donnelly.

I think we'll take our mid-afternoon recess at this time, ladies and gentlemen. Ten minute recess.

(Jury leaves courtroom.)

THE COURT: Mr. Kreidman, what is the People's theory with respect to the last three counts of the indictment, that is those counts that deal with the alleged burglary of property from Mr. Robinson's apartment?

MR. KREIDMAN: Your Honor, when you have property, recently discovered property, recently stolen property found in the constructive or actual

10/5

Colloquy

with the testimony, based on Your Honor's decision in dismissing counts four, five and six of the indictment, if Your Honor pleases, I would now have to move for a mistrial based on the fact that all of that evidence was produced before the jury, they saw it; its prejudicial effect it has on this defendant, and I know Your Honor will adequately instruct the jury, but I don't think there is an instruction that would be adequate and strong enough to erase the indelible impression that these fur coats and the jewelry have made as far as this defendant is concerned on the question of prejudice.

THE COURT: Well, I'll deny your motion, Mr. Coiro.

MR. COIRO: Thank you.

THE COURT: The items were admitted subject to connection. I think the District Attorney offered them in good faith.

I think the question as to the sufficiency of the fourth, fifth and sixth counts is an extremely close one. I see no basis for declaration of a mistrial because there was reference to these fur coats on this trial.

As I say, I believe that The Court can

A187

ROSNER

STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 28 day of ~~XXX~~ March 1977 deponent served the within *Appendix* upon

Hon. Louis J. Lefkowitz, Attorney General

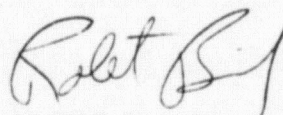
attorney(s) for

Respondents-Appellants

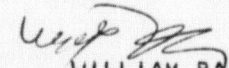
in this action, at

2 World Trade Center, NYC

the address(es) designated by said attorney(s) for that purpose by depositing 1 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 28 day
of March, 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified In Richmond County
Commission Expires March 30, 1978